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MMS'S PROPOSED RULEMAKING ON CERTIFICATES OF FINANCIAL RESPONSIBILITY

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MMS's Proposed Rulemaking on Certif...ARING

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SUBCOMMITTEES ON
COAST GUARD AND NAVIGATION
AND
OCEANOGRAPHY, GULF OF MEXICO, AND
THE OUTER CONTINENTAL SHELF

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

THE OIL POLLUTION ACT REQUIREMENTS FOR FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES, AND THE MINERALS MANAGEMENT SERVICE'S ADVANCED NOTICE OF PROPOSED RULEMAKING TO DEVELOP NEW REGULATIONS

OCTOBER 26, 1993

Serial No. 103-79

Printed for the use of the Committee on Merchant Marine and Fisheries

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MMS'S PROPOSED RULEMAKING ON FINANCIAL RESPONSIBILITY

TUESDAY, OCTOBER 26, 1993

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION, AND THE SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF, COMMITTEE ON MERCHANT MARINE AND FISHERIES,

Washington, DC.

The Subcommittees met, pursuant to call, at 2:00 p.m., in room 1334, Longworth House Office Building, Hon. W. J. (Billy) Tauzin (Chairman of the Coast Guard and Navigation Subcommittee) presiding.

Members Present: Representatives Tauzin, Ortiz, Hughes, Lancaster, Stupak, Pickett, Hochbrueckner, Green, Laughlin, Taylor, and Coble.

Staff Present: Catherine Tucker, Bill Wright, Douglas Cheramie, Lee Crockett, Joan Bondareff, Ed Lee, Robert Wharton, John Aguirre, Terry Schaff, Greg Gould, Richard Russell, Dave Whaley, and Margherita Woods.

Mr. LAUGHLIN. [Presiding.] At this time, I will call the committee meeting to order. I have an opening statement by Chairman Billy Tauzin, which I will read.

STATEMENT OF HON. BILLY TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA, AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION, AS READ BY HON. GREG LAUGHLIN

Mr. LAUGHLIN. Good afternoon, ladies and gentlemen. Today, the Coast Guard and Navigation Subcommittee and the Oceanography, Gulf of Mexico, and the Outer Continental Shelf Subcommittee are here to conduct an oversight hearing on the Oil Pollution Act requirements for certificates of financial responsibility for offshore facilities. I want to take this time to thank Congressman Ortiz, Chairman of the Oceanography Subcommittee, for his participation and assistance in this hearing. I would also like to thank the staff who have helped in preparing for this hearing.

On August 25, 1993, the Minerals Management Service published an Advanced Notice of Proposed Rulemaking, announcing the process of developing new regulations to implement the oil spill financial responsibility requirements for offshore facilities. Currently, MMS is receiving comments on this issue until December 24, 1993.

It is apparent from the concerns I have already heard that this rulemaking is far reaching and will have drastic impacts on busi-

nesses, insurers, and communities throughout the United States. The Act requires that certificates of $150 million worth of coverage are needed for offshore facilities in order to comply. Because of the definitions of offshore facilities and navigable waters, MMS has had to develop a very broad rulemaking.

You will hear today that these rules will be applicable to marinas, oil storage facilities, trucks carrying oil products, and inland pipelines. The underlying reason why these rules are being proposed for such broad application is the definition of the term "navigable waters" as used in the Clean Water Act. I want to remind Members that this definition has caused the current controversy over extending the definition of wetlands to areas that we often think of as dry. The Oil Pollution Act adopts the identical definition of "navigable" waters as the Federal Water Pollution Control Act. The Congress redefined the term "navigable" waters to mean "waters of the United States". This term includes wetlands.

One would think that "navigable" means the ability to navigate a vessel of some sort on the waters, or at a minimum, the ability to wade in the waters. However, "navigable" means merely damp land. This has been the root cause of the wetlands controversy, and today's hearing will demonstrate that the failure to adopt a clear and broadly understood and accepted definition of "navigable waters" can result in severe unintended consequences.

Our focus today will be on gathering information on the potential impact this rulemaking will have; the flexibility, if any, MMS may have in developing these regulations that would be acceptable; and the possible solutions.

The Coast Guard has been struggling for two years to propose rules requiring certificates of financial responsibility for vessels carrying oil into U.S. waters. The Coast Guard Subcommittee held a hearing on that issue in November of 1991, and we are still at an impasse. The insurance companies are saying they will not provide insurance to vessels because of the risks involved, and I see the same thing happening for offshore facilities.

Before we hear from our witnesses, I would like to recognize other Members for their opening statements. First, I would like to recognize the distinguished Ranking Minority Member of the Coast Guard and Navigation Subcommittee, Congressman Howard Coble.

Mr. Coble, before you precede, I want to remind everyone that this is really Mr. Tauzin's statement.

Now, Mr. Coble, if you will proceed.

Mr. COBLE. Thank you, Mr. Chairman. At the outset, without objection, I would like to submit the statements of Congressman Fields and Congressman Weldon into the report.

Mr. LAUGHLIN. Without objection, it is so ordered.

[The statements of Messrs. Fields and Weldon follow:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that this hearing has been scheduled. The Advanced Notice of Proposed Rulemaking (ANPR) published by the Minerals Management Service (MMS) has served its purpose. It has called attention to the overly broad and potentially damaging requirements as interpreted by MMS from the Oil Pollution Act of 1990.

It is clear from the ANPR that MMS has taken a very broad interpretation of the statute and is looking for further guidance from us. I hope that today's hearing shows that it was not this Committee's intent, nor the intent of Congress, to cover such a broad array of industries and businesses with this statute. Nor was it our intent to push people out of business by enacting regulations which are so stiff and unyielding that compliance is difficult.

Having said that, it is also clear that Congress intended operators of oil and gas facilities on the Outer Continental Shelf (OCS) and vessel operators which carry oil and gas products to possess adequate insurance in the event of a spill. While no one ever wants to see a repeat of the oil spill in Prince William Sound, should such an event happen, it is necessary that the spiller be prepared to meet its financial obligations for cleanup and restoration.

The suggestions in the ANPR are the best examples of an agency overregulation I've seen in quite a while. It reminds me of the recent attempts of the Research and Special Programs Administration to regulate salad oil as a hazardous substance. Fortunately, the Research and Special Programs Administration changed its mind. I hope that the MMS will change course as well.

In the Oil Pollution Act of 1990, Congress intended to increase the existing financial responsibility requirements of the Clean Water Act and the Outer Continental Shelf Lands Act of 1978 for vessels and other outer continental shelf facilities, but we obviously did not intend to require recreational boating marinas to purchase $150 million in financial responsibility. Those of us who worked to develop the Oil Pollution Act were satisfied when the MMS was delegated the responsibility to implement the portion of OPA '90 dealing with the offshore industry. We are not pleased to see, however, that MMS would consider overreaching to the extent suggested in the ANPR.

The requirements for financial responsibility for vessels and OCS facilities must be addressed together. Those of us who were conferees for the Oil Pollution Act of 1990 were advised that it would be nearly impossible to obtain certificates of financial responsibility in an unlimited liability regime. I advocated an international system of liability that would impose reasonable limits of liability to facilitate the availability of insurance. It is no surprise that the oil production and transportation industries today are experiencing critical problems with obtaining oil pollution insurance.

It was also not our intent to put people out of business. It has come to my attention that the higher financial responsibility limits and the rigidness of the types of certificates which are available to companies operating on the OCS may force some small independent producers of oil and gas to stop operation. While secure financial responsibility is the goal, some flexibility should be available to operators in obtaining the required certificates.

Mr. Chairman, I appreciate the opportunity to let MMS hear my views and to take the testimony of today's witnesses back with them before the publication of the Notice of Proposed Rulemaking.

Thank you, Mr. Chairman.

STATEMENT OF HON. CURT WELDON, A U.S. REPRESENTATIVE FROM PENNSYLVANIA, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF

Mr. Chairman, I would like to congratulate both you and Chairman Ortiz for calling this hearing. The Minerals Management Service's (MMS) Advance Notice of Proposed Rulemaking has raised some troubling questions about the implementation of the Oil Pollution Act (OPA) of 1990.In an effort to prevent a repeat of the *Exxon Valdez* tragedy in Prince William Sound, Congress enacted OPA '90. OPA '90 contained, among other measures, an increase in the environmental cleanup and restoration insurance requirement for offshore oil facilities. Under the Act, MMS must pursue a rulemaking to increase offshore oil facility spill insurance from the current minimum of $35 million to $150 million.

MMS's Advance Notice suggests a broad interpretation of the OPA '90 requirement. The MMS proposal not only increases the insurance requirements, but also expands the definition of oil facilities covered by the requirement. As written, the proposed rulemaking would even classify fuel tanks on private marinas as offshore oil facilities. The marinas, in turn, would then be forced to carry $150 million of insurance.

I am a strong advocate of protecting the marine environment and feel it is imperative that outer continental shelf oil facilities carry sufficient insurance to clean up

spills. The provisions of OPA '90 were designed to meet that need. They were not, however, designed to turn piers into oil platforms.

Changing the manner and level of insurance coverage for offshore oil facilities is obviously a complex task. MMS's Advance Notice raises many questions which I am certain our distinguished panelists will be able to address for us this afternoon.

Today's hearing will undoubtedly assist the Subcommittees on Oceanography and on Coast Guard understand MMS's Advance Notice of Proposed Rulemaking. I am hopeful that it will also help MMS better understand the Committee's intent when it wrote OPA '90.

Thank you, Mr. Chairman.

STATEMENT OF HON. HOWARD COBLE, A U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. COBLE. I thank you and Chairman Tauzin for having called a hearing regarding the Minerals Management Service's recently published Advanced Notice of Proposed Rulemaking on Certificates of Financial Responsibility for offshore oil facilities. You have touched on the details that plague me and, I am sure, plague many others, but I am concerned about the Minerals Management Service's interpretation of the Oil Pollution Act of the 1990's definition of offshore oil facilities.

It is my belief that the Congress did not intend to require every small inland marina to come up with $150 million worth of insurance. Perhaps we can plow through that today. To say that such a marina with one gas pump, for example, is enormous risk to the environmental condition as an offshore oil rig is difficult for me to comprehend.

I look forward to hearing the opinions of the witnesses about this proposal, Mr. Chairman. Again, thank you for having called the meeting.

Mr. LAUGHLIN. Thank you, Mr. Coble.

Mr. LAUGHLIN. Next, I recognize for an opening statement the Chairman of the Oceanography, Gulf of Mexico, and Outer Continental Shelf Subcommittee, the Honorable Solomon P. Ortiz, my neighbor to the left.

STATEMENT OF HON. SOLOMON P. ORTIZ, A U.S. REPRESENTATIVE FROM TEXAS

Mr. ORTIZ. Thank you. I would like to welcome all of you here today on behalf of the two subcommittees. As Chairman Tauzin stated, we will examine the advanced notice of proposed rulemaking on the financial responsibility requirements of the Oil Pollution Act of 1990. The Minerals Management Service published this advanced notice in the **Federal Register** on August 25, 1993.

[The information may be found at end of hearing.]

Mr. ORTIZ. As Chairman of the Subcommittee on Oceanography, Gulf of Mexico and the Outer Continental Shelf, I have received many comments from concerned individuals such as marina owners, fishermen and oil and gas operators in the Gulf of Mexico regarding the potential impacts of this proposed rule. As I understand it, the Oil Pollution Act of 1990 has placed the Minerals Management Service in a position of overseeing the implementation of portions of the Act that require evidence of financial responsibility for all facilities located in, or under any of the navigable waters of the United States.

Implementation of a rule that would raise the financial responsibility requirement for OCS facilities from the current $35 million level to $150 million and establish a new $150 million requirement for all "offshore facilities" could force a number of these individuals out of business. It has been brought to my attention that the cost of insurance, if available, could be as high as $1 million a year. This annual premium itself would far exceed the gross income of the vast majority of the marina owners, fishermen, and oil and gas operators in the Gulf.

In addition to the economic implications of this proposed rule, expanding MMS jurisdiction to state coastal waters and inland areas would require commitment of a substantial amount of the Agency's resources.

I am sure that if the MMS had to, they would be up to the challenge, but I do not believe that it was the intent of Congress to require the MMS to ensure that marina owners and fishermen have $150 million of oil spill insurance.

It is my hope that this hearing will clarify a number of these issues so we can begin to study ways to implement the measures of the Oil Pollution Act in a reasonable manner.

I would like to thank my distinguished colleague, Chairman Billy Tauzin, for joining me in this joint hearing today. I appreciate my good friend, Chairman Laughlin, for filling in because we have conferees' meetings that started about 15 minutes ago, and we need to get there.

In addition, we have received written testimony from representatives of marina owners and the shrimping industry in Texas that will be made a part of the record. I hope all the information used in this hearing will be made available to MMS as they continue in this rulemaking process.

Thank you very much.

Mr. LAUGHLIN. Thank you, Chairman Ortiz.

Chairman Tauzin, so that Mr. Taylor doesn't go back to Louisiana and spread any rumors that you have been deposed as chairman of this important subcommittee, I want to call on the real Chairman of the Coast Guard and Navigation Subcommittee for any additional comments he would like to make in addition the ones I made in his name earlier, with a Texas accent.

Mr. TAUZIN. Thank you. I always knew you were a Cajun at heart.

The House is about ready to take up the National Biological Survey Act. I have the first amendment to be offered. It will be necessary for me to leave this hearing and attend to these Floor duties. I have asked Mr. Laughlin to chair this hearing, and he has consented to do so.

For which I am very grateful, Greg.

What I did want to add was the notion that I hope this hearing will focus on something. I hope all committee members will be as interested, as I personally am, in the question of how much flexibility exists at MMS in interpreting OPA '90 financial responsibility sections.

If as the notice for comments indicates, flexibility is very limited, the definitions of "facilities" and "navigable waters" do mean, that small operations, pipelines crossing waterways, marinas, even

bridges in some cases, might be subject to this incredibly large financial responsibility. If MMS has no flexibility to decide otherwise, then we are faced with a very serious legislative challenge. No one wants to open up OPA '90 again.

We are hopefully going to learn today whether that is an option we simply cannot avoid, if the flexibility at MMS is so restricted and limited that we have no other choice but to cure this problem.

I want to thank all the witnesses who have agreed to be here. I also want to thank our own Louisiana witnesses, Mr. Taylor and Mr. Hebert, for journeying to Washington. They will give us insights from the independent community and the State as to how they will be impacted.

It extends as Mr. Taylor and others will point out in their testimony, to a lot more businesses than the oil and gas community if that flexibility is not in Mr. Fry's hands.

We need to carefully look at this today and, determine whether we can assist MMS in properly using its flexibility under the Act to avoid some of the serious consequences that will be outlined today or will we be forced, like it or not, to look at the possibility of reopening OPA '90 even before it is fully implemented. That is a pretty serious challenge.

I invite the committees' Members to engage in this serious challenge.

As I mentioned earlier, I have to return to the Floor to engage in those responsibilities that I mentioned, but I have your written testimony and I will be looking forward to review the questions and answers that the committee will direct to the very distinguished panel of witnesses today.

Thank you, Mr. Chairman, again for offering to chair this meeting on my behalf in what I hope will be a very successful hearing today.

Mr. LAUGHLIN. Thank you for the leadership that you and Chairman Ortiz and Mr. Coble have given these two committees.

Do any other members wish to make a statement?

Mr. PICKETT. I have a statement to submit for the record. I ask unanimous consent to do that.

Mr. LAUGHLIN. Without objection, it is so ordered.

[The statements follow:]

STATEMENT OF HON. OWEN PICKETT, A U.S. REPRESENTATIVE FROM VIRGINIA

Mr. Chairman, I look forward to hearing from today's witnesses regarding the Minerals Management Service's pending regulations governing the establishment of financial responsibility for offshore oil facilities and gas facilities.

The Commonwealth of Virginia is very much concerned over efforts to establish oil and gas exploration and production in U.S. waters off its coastline. OPA 90 sought to establish liability levels that approximately and reasonably account for the relative risks posed by the various facilities subject to the Act. It is my hope that the regulations ultimately implemented by the Minerals Management Service pursuant to OPA 90 will succeed in ensuring that parties responsible for offshore oil and gas facilities will be able to meet the financial responsibility requirements of OPA 90.

Section 1019 of OPA 90 provides that a State may enforce, on the navigable waters of the State, the requirements for financial responsibility imposed under section 1016 of the Act, which enumerates the potential ways of demonstrating financial responsibility. This authority includes the right to inspect facilities, to require the display of evidence of financial responsibility and to impose sanctions for failure to comply with the requirements.

In regard to Section 1019, I am particularly interested in hearing from the Minerals Management Service on the manner in which it will be meeting and coordinating with coastal states such as Virginia concerning financial responsibility programs and how these are expected to administer their respective programs consistent with OPA 90.

Finally, Mr. Chairman, marina operators and the recreational boaters and boating industry that they serve are all major contributors to the economy of southeastern Virginia. In recent years the recreational boating industry, including marina operators, has suffered from new taxes and fees. But the despair and agony of the industry's recent hard time will pale in significance to the catastrophe that will ensure if marina operators are required to provide certificates of responsibility for $150,000,000.

It was not the intent of Congress when it enacted OPA 90 to treat recreational boating marinas as "offshore" oil and gas facilities. If the MMS promulgates a final rulemaking that requires marina operators to show financial responsibility of $150,000,000 to ensure payment of damages resulting from fuel spills, the agency will succeed in shutting down an entire industry in Tidewater that is comprised largely of small, family-owned businesses. If we must reopen OPA 90 to fix this problem, I will be the first in line to introduce appropriate remedial legislation.

STATEMENT OF GENE GREEN, A U.S. REPRESENTATIVE FROM TEXAS

I want to send a special welcome and hello to Gary Mauro, our Land Commissioner in Texas. I realize the importance of preventing, responding to, cleaning up, and paying for any oil spills in U.S. waters. Therefore, we must look at the responsibilities of offshore facilities and the definition of offshore facilities.

I look forward to hearing testimony from our panelists and to working with our Chairman. Thank you.

Mr. LAUGHLIN. Mr. Lancaster?

Mr. LANCASTER. No, thank you.

Mr. LAUGHLIN. Mr. Stupak?

Mr. STUPAK. No, Mr. Chairman.

Mr. LAUGHLIN. We are going to have this as one panel.

Mr. John Shively, if you will come forward and take a seat at the witness table, I believe there is space there for you. Our first witness will be Mr. Daniel Sheehan, Director, National Pollution Funds Center, United States Coast Guard. Please proceed Mr. Sheehan.

STATEMENT OF DANIEL SHEEHAN, DIRECTOR, NATIONAL POLLUTION FUNDS CENTER, UNITED STATES COAST GUARD

Mr. SHEEHAN. Good afternoon, Mr. Chairman. It is my pleasure to be here this afternoon to address certificates of financial responsibility for all facilities handling oil and oil products operating in, on, and under navigable waters of the United States under OPA '90.

The responsibility for implementing this provision with respect to offshore facilities was delegated to the Minerals Management Service and the responsibility with respect to vessels was given to the Coast Guard. MMS recently published an advanced notice of proposed rulemaking, and this afternoon I would like to provide you a brief overview of the status of the Coast Guard's vessel financial responsibility rulemaking.

On September 16, 1991, the notice of proposed rulemaking for vessel COFRs was published in the **Federal Register**. At a hearing before the Coast Guard and Navigation Subcommittee in November 1991, nearly all industry witnesses appearing at that hearing generally opposed the NPRM as well as many of OPA '90's Title I fea-

tures. Those included potential unlimited liability, direct action, and nonpreemption of State laws.

The comment period on the proposed rule closed on January 24, 1992, and over 300 comments were filed. Most of the comments reiterated the themes expressed in the November hearing.

As promised in the NPRM preamble, the Coast Guard announced the availability of a preliminary regulatory impact analysis, or PRIA, in the July 21, 1993, **Federal Register**. Over 500 copies were distributed worldwide. While not everyone agreed with the analysis, most agreed and the maritime community praised its comprehensive background and statement of the issues. The PRIA comment period closed September 20, 1993.

The PRIA considered four distinct options: first, retaining the existing OPA '90 rules; adopt the NPRM; adopt the NPRM with an amendment to accept membership in a P&I club as an asset for self-insurance; and to adopt the NPRM with an amendment to the self-insurance formula by eliminating the working capital requirement and/or the requirement to maintain assets in the United States.

These options were analyzed in the PRIA for their potential economic impacts and for support of OPA '90's philosophy that the polluter should pay promptly for removal costs and damages associated with an oil spill, and that such payment should be assured.

Approximately 50 comments were filed on the PRIA, and they can be grouped as follows: those that support the NPRM; those that recommend P&I club membership be included as an asset for self-insurance, with the added feature of making the Oil Spill Liability Trust Fund a loss-payee; and those who recommend legislation establishing an Excess Insurance Facility (EIF) to serve as the COFR guarantor and to provide high-level insurance to tanker owners and operators.

I will summarize these comments:

NPRM, there were two new developments identified in the comments to the PRIA, first, the proposed creation of a new commercial insurance enterprise that would insure shipowners and operators up to the OPA '90 limits, and would also serve as guarantor; and second was the wider use of surety bonds.

P&I club membership as an asset with a loss-payee clause: The proponents of this approach postulate that P&I club membership has value and should be considered as an asset in the self-insurance criteria, and that the OSLTF be made a loss-payee.

The excess insurance facility, mandatory EIF is designed to provide high levels of insurance up to $2 billion for tanker owners operating in United States waters. This approach requires legislation, and shipowners would be required to purchase this high-level insurance to operate in U.S. waters.

The international group of P&I clubs, in their comments to the PRIA, reiterated its steadfast rejection of the NPRM and opposition to becoming guarantors subject to direct action. Lloyds of London explained its action by saying it opposes the NPRM, principally in its capacity as a direct insurer, rather than as a reinsurer.

Mr. Chairman, we intend to conclude this rulemaking and to evaluate all the comments and alternatives, measuring each against OPA '90's "polluter pays" principle. We may also consider

whether an alternative is permitted by OPA '90. Finally, we must consider the economic impact of each alternative. There is much detail still to be evaluated, but I am encouraged by the serious undertaking by several of the commentors to develop new alternatives.

The Coast Guard is evaluating all options with an open mind. The Commandant intends to submit his recommendations to the Secretary of Transportation later in the year. Depending on the approach selected by the administration, follow-on action could range from publication of a final or interim final rule, to publication of a supplemental notice of proposed rulemaking, to preparation of a legislative proposal. A final regulatory impact analysis will accompany a final rule.

Mr. Chairman, as we are at a sensitive stage of our administrative proceedings, I am not at liberty to discuss our deliberations on the specific proposals. Within this constraint, I will be happy to respond to any questions you may have.

Thank you very much.

[The statement of Mr. Sheehan may be found at end of hearing.]

Mr. LAUGHLIN. Next we will hear from the Honorable Tom Fry, Director, Minerals Management Service.

We are under the five-minute rule. We have a vote that will expire in about 12 minutes. After your testimony, we will take a short break to vote.

STATEMENT OF THE HONORABLE TOM FRY, DIRECTOR, MINERALS MANAGEMENT SERVICE

Mr. FRY. I want to thank you, Mr. Chairman. I appreciate the opportunity to be here and visit with this panel today. I have prepared some remarks that I would like to have made a part of the records, if I might.

Mr. LAUGHLIN. It is so ordered.

Mr. FRY. The Department of the Interior was given the responsibility for implementing certain portions of the Oil Pollution Act of 1990. Two areas where we gained responsibility are: one, in the area of oil spill prevention and response area; and two, in the area of evidence of financial responsibility for "offshore facilities."

From the standpoint of oil spill response, we have implemented rules and regulations and we are also involved in performing unannounced inspections. Concerning the area of financial responsibility, we recently published an Advanced Notice of Proposed Rulemaking. The reason we have chosen this route is because we want to be cautious.

We could have issued either a rule or a notice of proposed rulemaking, but our reading of OPA '90 section 1016(c) gave us a great deal of concern.

Let me state that the Department strongly supports the underlying themes of the Oil Pollution Act; that is, to first of all prevent oil spills, and second, to provide appropriate funding to clean up those that may occur. We feel, in general, that the law provides for an environmentally sound approach. However, as we have read this law, we have become very concerned about how the law should be interpreted and implemented. Therefore, we issued an Advanced

Notice of Proposed Rulemaking in order to solicit comments from as many potentially affected segments of society as possible.

Not only have we gone to our normal constituencies, we have an outreach program that has dealt with the insurance community, the banking community, marinas, and many others—including environmental groups—in order to try to determine how to implement section 1016(c) of this law. We have not reached a decision yet as to the breadth of section 1016(c), although I can tell you that our attorneys feel that the law does not give us much flexibility in implementing rules and regulations.

To date, we have received about 66 comments from the public concerning section 1016(c) or concerning our Advanced Notice of Proposed Rulemaking. Some of the concerns that have been raised are whether or not companies could meet the $150 million financial responsibility; whether or not this law should apply to something as nontraditional as marinas or other activities that take place on Federal navigable waters; and whether or not in the State of Alaska fuel pumps and storage that are oftentimes found on wetlands would be covered by this law.

We also have had the question raised as to whether or not "risk" should have some role to play in how this law is implemented. The question there is, should a offshore facility that produces 100,000 barrels per day have the same kinds of rules as a small entity that produces 10 barrels a day, no matter where that might be found? Another question is whether there is the capability in the insurance industry to provide insurance for these amounts of insurance.

We are led to believe by comments that have been received that the insurance industry is not able to produce such insurance to cover the number of entities which may be subject to this law. We will be happy to share the comments that we have received to date with this committee at the closing of our Advanced Notice Proposed Rulemaking, as well as share whatever comments we receive subsequent to this hearing.

[The information may be found at end of hearing.]

In closing, I would like to say that we are here today to try to find out what the breadth of section 1016(c) is. We are also very concerned about the enforcement of section 1016(c) and how we will implement any regulations.

We hope to find out what others think the congressional intent is and what this committee thinks the congressional intent is. That is why we have been cautious in our approach with the proposed rulemaking.

I will be happy to answer any questions that you might have.

[The statement of Mr. Fry may be found at end of hearing.]

Mr. LAUGHLIN. Thank you, Mr. Fry.

At this point, we will take a seven- or eight-minute recess to go vote. As soon as Mr. Coble and I get back, we will proceed with the hearing.

[Recess.]

Mr. LAUGHLIN. At this time, I will call the hearing back to order. Our next witness is Mr. Timothy Hebert, Deputy Oil Spill Coordinator, State of Louisiana. You may proceed.

STATEMENT OF TIMOTHY HEBERT, DEPUTY OIL SPILL COORDINATOR, STATE OF LOUISIANA

Mr. HEBERT. Thank you, Mr. Chairman. The State of Louisiana appreciates the opportunity to present to you our recommendations and concerns regarding Certificates of Financial Responsibility for all facilities handling oil and oil products, operating on the Outer Continental Shelf.

While we recognize the threat of an oil spill will always exist, we want to point out the fact that virtually all oil imported must be brought into this country by tanker; and 95 percent of the offshore oil and most of the oil and gas produced on or near a water body is brought ashore by pipeline. Tankers are responsible for about 45 percent of the oil discharged into the world's oceans, while the world drilling operations are the sources of only 1.5 percent of the oil discharges.

In the Gulf of Mexico, particularly off the coast of Louisiana, the spill record for production facilities is equally superior. Just recently, a major oil company operating in the waters of Louisiana advised the MMS that its worst-case discharge from an offshore production facility was 23,000 barrels of oil. Compared to the Jahre Viking, a tanker capable of carrying 4.5 million barrels of oil and which calls in the Gulf of Mexico, both the threat of a production-related spill and the potential damages associated therewith are relatively small.

The State asserts that the MMS's preliminary interpretation of the extent of the geographic jurisdiction to which the ANPRM applies is exceedingly broad and is inconsistent with the legislative intent of OPA '90.

The proposed regulations would be surprisingly broad in that they would apply to far more facilities than what is commonly considered "offshore" or OCS facilities. MMS has initially interpreted OPA '90 as requiring proof of financial responsibility for all offshore facilities in, on, or under U.S. navigable waters.

This broad definition of "offshore facility" would seem to make every marina and fuel dock in the country, every pipeline that crosses inland navigable waters, and facilities and pipelines located in wetlands subject to these financial requirements.

Clearly, there is absolutely no manifestation of legislative intent whatsoever in OPA '90 that Congress intended to burden these types of "inland/onshore" operations with $150 million of financial responsibility. In fact, the consistent understanding of all congressional committees engaged in OPA's development was that requirements applicable to offshore facilities were limited to the context of oil production operations on the Outer Continental Shelf. There is no evidence of any congressional intent to extend these historic OCSLA requirements to onshore facilities.

The report of the Senate Committee on Environment and Public Works, at page 16, states, "There is no requirement for showing evidence of financial responsibility for onshore facilities." Perhaps there is still an administrative solution. The State of Louisiana is willing to work with this subcommittee and MMS to try to fashion such a solution.

However, at a minimum, the State of Louisiana respectfully urges the MMS to confine the application of its financial responsibility requirements to those "offshore facilities" that are engaged in the exploration and production of oil on the Outer Continental Shelf, at the previous $35 million responsibility level.

The State of the Louisiana also respectfully requests this subcommittee to investigate the continual need for increasing the amount of COFRs for offshore facilities, as well as the necessity for COFRs for offshore facilities.

This needs to be analyzed in light of the fact that facilities pose a relatively minimal spill risk and the microeconomics of oil production for these facilities are so sensitive that small administration or regulatory initiatives can offset a successful operation.

Additionally, we want to point out that the existence of various oil spill contingency funds make these COFRs, in our estimation, redundant. The establishment of a virtually limitless source of non-Federal response funds, the Oil Spill Liability Trust Fund, completely addresses the concerns raised in this section concerning facilities. The natural gas and oil industry is paying for this fund from dedicated fees, and the Federal fund now holds $1 billion or more in cash on hand.

Additionally, those States with oil and gas production have some sort of spill contingency fund and the State of Louisiana boasts $20 million in its oil spill contingency fund. However, assuming that the rule would be implemented, I want to bring to your attention a few facts:

Dr. Robert Baumann, at the LSU Center for Energy Studies, indicated that there are 2,000 operators presently in our State. Assuming these operators realize a net operating profit of $3 per barrel and that the preliminary cost estimates for surety bonds to reach $150 million (and assuming they are available) would be $20 per $1,000 of coverage per year, then only 37 operators in this State could afford that coverage.

At risk in Louisiana is $642 million in mineral income. Particularly in the coastal parishes; 6,700 wells would be shut down, 1.1 million cubic feet of natural gas and 140 million barrels of oil per year would cease to be produced.

This cessation of production is tantamount to a loss of royalties and taxes. Thus, the State of Louisiana will suffer damages from this Federal taking in lost royalties and taxes.

Finally, we would like to say that the State is concerned that most other States are unaware that they are all negatively impacted by this provision. The fact that MMS is handling this issue and hearings are only scheduled in Louisiana, Texas and California, possibly Alaska and Pennsylvania, has led most States to believe this is strictly an oil and gas issue, which it definitely is not.

We respectfully ask this committee to inform the appropriate Federal agencies of the potential negative impacts of this ANPRM and solicit their comments as well.

I have submitted a revised testimony which I would like submitted into the record and will answer any questions at the appropriate time.

Mr. LAUGHLIN. Thank you, Mr. Hebert, your additional comments will be made a part of the record.

[The statement of Mr. Hebert may be found at end of hearing.]

Mr. LAUGHLIN. Our next witness is the Honorable Garry Mauro, Commissioner of the Texas General Land Office. I would like to say my Land Commissioner is one of the recognized national authorities on the Gulf of Mexico, and certainly a program that has gotten a great deal of attention, from which all of us benefit; and that is the Beach Cleanup Program.

STATEMENT OF GARRY MAURO, COMMISSIONER, TEXAS GENERAL LAND OFFICE

Mr. MAURO. Thank you, Mr. Chairman. Thank you for the opportunity to address the committee today on a problem that is vital to Texas.

As the Commissioner of the Texas General Land Office, I am the constitutionally designated trustee for 20.5 million acres of publicly owned State land in Texas. Approximately 4 million acres of this land is submerged, which includes our coastal bays, estuaries and the Gulf of Mexico waters out to 10.3 miles.

The revenue from leasing of public lands to oil and gas exploration and production companies is deposited in the Permanent School Fund, which helps fund public education in Texas. For fiscal year 1992, $45.5 million from submerged lands oil and gas royalties, rents and bonuses was deposited in the PSF.

In addition, the General Land Office is the lead State agency for the prevention and response to oil spills in the marine environment. That means, for the most part, I am a big supporter of OPA '90. I have been supporting being tough on those who pollute, and making the polluter pay.

Mr. Chairman, the proposed financial responsibility requirements contained in the MMS ANPR threaten a major source of funding for Texas. They also threaten the 839 operating wells in Texas State waters, the owners and operators of these wells, the subsidiary service industry and the employees and families of all of these associated entities.

Mr. Chairman, without sounding alarmist, these are the facts:

There are presently 145 operators of oil and gas wells in Texas bays and Gulf of Mexico waters. These 145 operators have a total of 839 wells.

The average production per well is just over 50 barrels per day. That is right, only 50 barrels per day. Twenty-eight percent of the operators have average daily production per day below 15 barrels; 77 percent of the operators have 10 or fewer wells in State waters. In fact, in Texas waters there are only two wells that produce more than 200 barrels per day. These wells are located in mature fields, where the geology is well known. There is not a great risk of blowout in these waters. Virtually all of this production is mechanically lifted to the surface, and therefore, the subsurface pressures do not present significant risks of blowout.

Mr. Chairman, not only are our production rates and risk low; those companies that are producing in Texas waters cannot obtain financial responsibility coverage in the amounts proposed by the MMS notice. Only 11 percent are operated by major oil companies. The rest of the wells in Texas bays and offshore waters are operat-

ed by independents. These independents cannot afford to establish $150 million in financial responsibility. In fact, only a handful of these companies have a net worth approaching $150 million.

My staff has spoken to a number of independent oil and gas operators in the past few weeks. Here is what they have heard:

From one, "The $150 million of liability coverage would eliminate most of our potential partners and ultimately force us to operate in other areas. We operate several producing wells in State waters that we would be forced to plug and abandon."

Another, "The risk of catastrophic spill is minimal for most operators. Because of the low risk, liability coverage has been available up to the current $35 million requirement.

Mr. Chairman, I hope I have adequately portrayed the impact such a requirement will have on an industry which is suffering from declining domestic production and increasing foreign oil exploration.

I would like to propose three steps which the government can take that will provide a reasonable and rational basis for protecting the environment from oil spills without devastating our domestic independent oil and gas producers.

First, these offshore facilities—unlike tankers, onshore facilities and deepwater ports—are faced with a single requirement for financial responsibility. The $150 million is not based on the risk these facilities represent. There is no consideration given to traditional elements of risk analysis. OPA specifically recognizes these facts in setting liability limits for onshore facilities. These same elements should be considered for offshore facilities. They are:

Size or production rate of the facility;
Storage capacity
Oil throughput
Proximity to sensitive areas
Type of oil handled
History of discharges; and
Other relevant risk factors.

MMS is going to conduct a series of regional meetings where they will hear firsthand from the affected industry. MMS is authorized under OPA to report to the Congress on adjusting liability limits. We recommended that they do so and that they do it based on the real risks these facilities pose to the environment.

Second, as an alternative to proving financial responsibility, allow independents to join a pool that provides the required coverage at premiums based on risk. This is the way that vessel owners are covered for OPA and a similar mechanism should be available to offshore facilities, which, in Texas, pose less of a risk than tank vessels.

And third, the government should consider utilizing the Oil Spill Liability Trust Fund created under OPA to assist these independent operators in meeting OPA's financial responsibility requirements.

In closing, I support OPA '90. We have a good response and prevention program in Texas, and I feel better protected because of OPA '90. But this particular requirement, Mr. Chairman, just doesn't make common sense.

As one involved in the hearings, I never heard anybody talk about this being the result of OPA '90.

Mr. LAUGHLIN. Thank you, Commissioner Mauro. Once again, your comments are quite enlightening. We appreciate them.

[The statement of Mr. Mauro may be found at end of hearing.]

Mr. LAUGHLIN. Our next witness is Mr. John Shively, Senior Vice President, Northwest Alaska Native Association.

STATEMENT OF JOHN T. SHIVELY, SENIOR VICE PRESIDENT, NORTHWEST ALASKA NATIVE ASSOCIATION

Mr. SHIVELY. Thank you. I am John Shively and I am the Senior Vice President of NANA Development Corporation. We operate four fuel facilities in rural Alaska, three in small rural communities that are the primary source of heating fuel and gasoline for the communities and one in an industrial industrial area near Prudhoe Bay.

I will not repeat the problem that exists here. I think the Chairmen, in their opening statements, outlined it very well and others have also outlined it well. I would like to talk about how it affects the people I serve, who are largely native Alaskans.

Because almost all native communities in rural Alaska are located on wetlands, it is our understanding that if the Mineral Management Services proceeds all of the fuel facilities in rural Alaska, or virtually all of them, will fall under these regulations.

To give you an idea about the size of these projects, the three that we operate in small rural communities range in capacity from 120,000 gallons to 240,000 gallons. Our revenues range from $175,000 to $325,000 a year.

We estimate that if these facilities were to meet the requirements that are supposedly set out in the law that if we could find insurance—and our brokers have told us that is not necessarily something that would be available—but if it was available, the cost would be between $800,000 and $2 million a year, a multiple between two and 10 times the annual revenues.

The cost of fuel in rural Alaska for your information right now runs between $2.50 and $3 a gallon for gasoline, well above what other Americans pay. If we were to add the insurance to this, we would multiply that cost by a factor of two to ten times.

Obviously, I do not believe that the law was meant to cover small facilities in rural communities. Nobody in their right mind would think that that $150 million in coverage was needed out there. Therefore, there are several solutions we see; one for the Minerals Management Service itself to have some flexibility in terms of whether or not they include wetlands or the size of the facilities.

My reading of the law does not give them the kinds of flexibility I would like to see. Absent that, I believe the Congress, much as they might not want to go in and look at OPA '90, should do that. This is a very serious problem.

It is our belief that if the Minerals Management Service proceeds with their regulations and implements them, basically most of the fueling facilities in rural Alaska will be shut down. That means no heat for homes, no light or power or heat; no fuel for people's snow

machines or boats, basically shutting down the communities. I don't believer Congress ever intended this.

We hope we can work with both Congress and the administration to find a solution to this problem.

Mr. Chairman, I would appreciate it if my full remarks could be placed in the record.

Mr. LAUGHLIN. Thank you Mr. Shively. Your complete written testimony will be made a part of the record.

[The statement of Mr. Shively may be found at end of hearing.]

Mr. LAUGHLIN. Our next witness is Mr. Damian Buckley, Vice President, WESTREC Marinas, representing the Marina Operators Association of America.

STATEMENT OF DAMIAN E. BUCKLEY, VICE PRESIDENT, WESTREC MARINAS, ON BEHALF OF THE MARINA OPERATORS ASSOCIATION OF AMERICA

Mr. BUCKLEY. Thank you, Mr. Chairman. You can probably tell by my accent that I am not from your part of the world. For that I do apologize.

Mr. LAUGHLIN. No apologies are necessary, but we may need an interpreter up here for Mr. Coble.

Mr. BUCKLEY. WESTREC is the Nation's largest marina investment firm with over 45 facilities we own or operate on the part of others. My office is at the Gangplank Marina here in Washington. I am testifying on behalf of the Marina Operators Association of America. WESTREC is on the Board of Directors of MOAA. MOAA is the national trade association of small businesses which provide marina services and waterway access to our Nation's boaters. Our members include large multimarina-owned companies, like WESTREC, concessionaires on Army Corps of Engineers lakes, marinas managed on behalf of the Department of the Interior National Park Service, small individually or family-owned marinas, dry stack storage facilities, service yards, and support services, such as manufacturers of boat docks and access ramps.

However, the far majority of our members are the small, family owned marinas with fewer than 100 boat slips.

Boating in America is big business, but it is primarily made up of small businesses. In fact, only 29 per cent of all marinas have more than 100 boat slips. It is estimated that the U.S. has slightly over 10,000 boat berthing facilities with 10 of more boats—found in marinas, boat yards, yacht clubs, dockominiums, public parks, and military bases. As you can see, the typical marina operator in our industry is truly a small business.

MOAA strongly believes the financial burden imposed by the proposed rule will cause most, if not all, marinas to close their fuel docks. Small marina operators simply cannot absorb this added cost; and, we believe, the market will not bear the increase in gas and diesel fuel prices needed to "pass on" the cost of this financial burden to the consumer. Many, but not all marinas, have fuel docks. But because of the small size of most operations, the typical fuel dock pumps less than 100,000 gallons of fuel per year. You can understand this if you look at Coast Guard statistics. Ninety-nine per cent of all recreational boats are less than 40 feet. A typical

gas and diesel tank will be placed on shore and will contain between 3,000 and 5,000 gallons. Some of the larger marinas with fuel docks have capacity of up to only 10,000 to 15,000 gallons. And we believe, we do not pose a great threat to the environment because of the small size of our operations and our fuels are light weight fuels that evaporate quickly. Because our members do not have financial resources nearly large enough to cover $150,000,000 in liability, it is likely marina owners will rely on insurance to show responsibility.

We have already spoken about the cost of insurance if it is available. Our members have been encountering some difficulty with LUST, that is the Leaking Underground Storage Act, that requires $1 million in financial liability insurance. My insurance agent stated that the cost of $150,000,000 in financial responsibility insurance will cost about $150,000 per year.

The problem of affording this level of coverage is seriously compounded by another provision in OPA '90 that says all guarantors of financial responsibility must agree to be sued directly. In common terms, that means an insurance provider to a marina could be sued for the entire amount of the liability. This is not a typical requirement of an insurance contract. Our members have been encountering difficulty in complying with the provisions of the Leaking Underground Storage Act, which requires $1,000,000 in financial liability insurance, because many insurance companies will not write coverage. Marinas have joined together in co-op arrangements to ensure compliance.

But, even if our members can get insurance coverage, the cost to the general public will be so exorbitant that many marinas will decide to close their fuel docks. We estimate the price of gasoline and diesel fuel will increase by as much as $2 per gallon at smaller marinas just to cover the added cost of financial liability insurance to the marina. Americans who enjoy recreating on the water will be forced to hand carry fuel in jerry cans to their boats, increasing the chance of spillage, fire, and explosion. Anglers will carry several gas tanks rather than one with the intent of filling up on the return trip. Others will install permanent larger fuel tanks or carry extra tanks creating a boating "Molotov cocktail."

Did Congress intend for this to happen? The proposed rulemaking is very frightening to us. To what extent will the Minerals Management Service carry the application of OPA '90 to facilities operating in, on, or under the U.S. navigable waters? Will a tugboat be required to show financial responsibility of $150 million when he transports a five gallon can of gas to a boater who ran out of gas on the Chesapeake Bay or Galveston Bay?

To the best of our knowledge, recreational boating marinas have never been classified as an "offshore" facility before. Not even in the Clean Water Act and not in LUST. Marinas have always been classified as "onshore" facilities.

We are now very surprised to be included with the giants of American commerce. If this issue wasn't so threatening to our businesses and to our form of recreation, it would be funny.

We believe the definitions in the Oil Pollution Act of 1990 are entirely ambiguous relating to the issue of whether a marina is classified as an onshore rather than an offshore facility. A plain

reading of the words would appear to indicate, at least to us, that a marina is an onshore facility.

In our history, our members have never had to deal with the Minerals Management Service. We have never heard of them before this issue. We have always been classified as "onshore" facilities and therefore, have worked with the U.S. Coast Guard and the EPA.

Mr. Chairman, our members want to know if Congress had this intent when OPA '90 was written.

The State of Washington also faced this problem of financial responsibility several years ago. It was addressed, at that time, by language in State Administrative Code and Statute exempting "marine outlets that do not dispense more than three thousand gallons of fuel to a ship that is not a tank vessel," and they did a good job.

We don't disagree with the intent of OPA 90, but we ask that you consider the effect the proposed rulemaking being examined at this hearing will have on small, family-owned businesses. Holding marina operators liable at the same level as major corporations will destroy a significant part of American recreation.

We look forward to working more closely with you and your staff on this issue. I would like my written statement to become part of this record. Thank you.

Mr. LAUGHLIN. Thank you, Mr. Buckley for your very clear and understandable testimony. I can tell you that I represent a lot of people who will be just as surprised as you to find out they are offshore facilities.

[The statement of Mr. Buckley may be found at end of hearing.]

Mr. LAUGHLIN. Our next witness is Mr. Pat Taylor, Chairman and Chief Executive Officer of Taylor Energy Company.

I understand you are from Louisiana.

STATEMENT OF PATRICK TAYLOR, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, TAYLOR ENERGY COMPANY

Mr. PAT TAYLOR. I am proud of the fact that Chairman Tauzin considers me a Louisianian, but I was born and raised in Texas.

Mr. LAUGHLIN. You are a better man than he told me.

Mr. PAT TAYLOR. Just please don't tell him that, sir.

I am Pat Taylor, Chairman President, CEO and sole stockholder in the Taylor Energy Company. Taylor Energy Company has been operating in the Gulf of Mexico quite successfully since 1983.

At the time that I went off shore I did so because of the opportunity that I saw presented there. Independents right now in the Gulf of Mexico are operating 70 percent of the drilling rigs in Federal waters. Since 1983, independents such as myself have spent more money on leases, bonuses and drilling than have the major companies.

Since 1988, independents such as myself—and I didn't make enough of them—have made 93 percent of the new discoveries of oil and natural gas in Federal waters, that is since 1988.

So I come here representing an independent industry that has shown it can operate safely, efficiently, and at great profit to the Federal Treasury in offshore waters.

I am also very pleased normally to be the last one to testify because it gives me the opportunity to correct whatever I disagreed with that has been said before me. I have not heard anything today that I disagree with. I sympathize with the marina owners. I sympathize with the Congress itself. I have to say, since I work with Mr. Fry—he is my landlord with MMS—I have to say I sympathize with Mr. Fry.

The purposes of the Oil Pollution Act of 1990 are threefold: To protect the environment, number one; to ensure that the taxpayer is not saddled with the cost of cleanup—make the polluter pay, Mr. Mauro, I agree with that; and third, to provide an incentive apparently so that the oil industry will not pollute. I agree with all those aims.

The results, however, are also threefold, but quite different. One, Title I of the Act will result in dramatically decreased offshore oil and gas production. We estimate fully a third of the 865,000 barrels produced in Federal waters in the Gulf of Mexico will be shut in. This will, ladies and gentlemen, result in a greatly increased danger to our environment because each and every barrel of that oil will have to be replaced by tanker-borne imported oil. That is one result.

The second result, the taxpayer, rather than facing an absolutely infinitesimal, if at all, even possible cost of a cleanup, is going to be faced with enormously increased costs, losses to the Federal Treasury of billions of dollars a year because of the lost production and lost activity in the Gulf of Mexico. We cannot comply with the law as it is written.

Thirdly, this Act, Title I of this Act, will result in the absolute death of competition in the U.S. oil and gas industry. There will be no independent oil and gas industry in this country. Our contribution will be lost. And this Nation will then be dependent on a handful of major companies for everything from production, yes, to supplies for fisheries and recreation as well.

I do not disagree with the oil spill response portions of this Act. I believe we were acting responsibly and safely before the Act passed, but unless that will assist us in preparing for the remote possibility of a spill and the response thereto, I am strictly, totally, absolutely in favor.

This is the only piece of legislation, Mr. Chairman, that I have seen that does more even than penalize my very existence. This piece of legislation denies me the right to exist.

The small companies in the Gulf of Mexico, like the small companies around this Nation, are the companies that are providing the jobs and driving the economy of this Nation. We are small. We are efficient, and we are absolutely responsible.

This company, Taylor Energy Company, is fully capable of funding any cleanup from any spill even remotely possible from any of our 16 platforms in the Gulf of Mexico. I have that capability. But I cannot comply with this law. I cannot get insurance to do it. If this is not changed, then my company will cease to exist and my employees will join the ranks of the unemployed in the oil and gas industry.

I would ask that my written statement be entered into the record. I appreciate very much the opportunity to address you on this very critical issue.

Mr. LAUGHLIN. Thank you. We appreciate your contributions here today.

[The statement of Mr. Pat Taylor may be found at end of hearing.]

Mr. LAUGHLIN. Now we will go to questions for the panel.

Mr. Sheehan, prior to OPA '90 when the Coast Guard handled COFRs for offshore facilities, did you have any problems with facilities, other than OCS facilities, having to comply? Was the $35 million in coverage more than average to pay for spill cleanup and damages?

Mr. SHEEHAN. When the Coast Guard administered the offshore facility financial responsibility plan, only those on the Outer Continental Shelf were required to demonstrate financial responsibility. For that reason, financial responsibility for inland facilities really did not occur. They were simply limited to what was on the Outer Continental Shelf.

With respect to the second part of the question, concerning the $35 million, we don't have that information at hand. It is something we will may have to look at in our records and supply for the record.

I have been told that the Outer Continental Shelf Land Act Funds never had to pay any claims for offshore spills, which would be an indication that $35 million probably was sufficient. But I would like to have the opportunity to supply that for the record.

[The information follows:]

COAST GUARD'S ADMINISTRATION OF OIL SPILL FUNDS

During the Coast Guard's administration of the now superceded Offshore Oil Pollution Compensation Fund under Outer Continental Shelf Lands Act (1978–1990), it never became necessary to use monies in that Fund for removal costs or damage claims. Even though numerous offshore spills occurred during that period, the responsible parties took appropriate measures, such as hiring cleanup contractors when necessary, to preclude any Federal or State cleanup cost or private party claims against the Fund. From this point of view, the $35 million financial responsibility requirement was adequate.

$35 million also seemed adequate from the point of view of spill size. Most offshore spills were so-called operational spills of one barrel or less. The largest spill during that period occurred in February 1988, when 15,576 barrels of Outer Continental Shelf crude oil escaped from a ruptured pipeline about 31 nautical miles southeast of Galveston, Texas. The next three largest offshore spills during that period also occurred in the Gulf of Mexico. In December 1981, approximately 5,100 barrels of crude oil were discharged from a pipeline on South Pass Block 60; in November 1980, approximately 1,450 barrels of oil overflowed from a storage tank on Platform A, High Island Block 206; and in July 1978, approximately 900 barrels of oil leaked from a pipeline leaving Platform B, Eugene Island Block 215.

Mr. LAUGHLIN. Mr. Fry, could you answer that question please, sir?

Mr. FRY. I will give it a shot, Mr. Chairman.

Under the prior law, the $35 million worth of responsibility did apply to the Federal offshore—and I would use that term as lying outside of the State's shoreline. We have found in the past that $35 million is both a significant and sufficient amount of money to handle OCS oil spill-related costs.

For example, since 1964, we had two spills that occurred and the total cost for cleanup and damages exceeded $35 million, the 1969 Santa Barbara spill in the Santa Barbara Channel, in 1993 dollars, cost $120 million.

There was also a spill in the Gulf of Mexico in 1967 that cost $88 million. For all other OCS spills, the cleanup and damage costs have been less than the $35 million.

Mr. LAUGHLIN. Mr. Sheehan, do you believe MMS will face the same problems you are having with insurance providers for COFRs for vessels?

Mr. SHEEHAN. Mr. Chairman, I would not presume to speak for the insurance industry, but I would make an observation that there is a slight difference. The major source of financial responsibility for vessels are the P&I clubs, who have said they are indemnitors and not insurers; and therefore, they say they will not provide anticipatory guarantees to the Coast Guard.

As we understand it, sir, to date P&I clubs have not insured U.S. off shore facilities. This has been principally the market of Lloyds of London. They have been the primary insurer or guarantor.

We indicated in our statement that there have been a number of potential organizations and insurance companies which have come forward with a view that they would be willing to provide insurance or bonds under our particular regime that has been proposed in our rulemaking.

While we don't know if those organizations would come to fruition, they have indicated their willingness to do so.

I am not sure that insurance providers would directly have the same problem with the MMS facilities that they have with us.

Mr. LAUGHLIN. Mr. Fry, what are you hearing from the providers?

Mr. FRY. We are hearing that the providers have a limited amount of insurance capability; that there is a limited amount of money for oil spill and pollution insurance coverage, and that at $150 million worth of financial responsibility per "responsible party" they could probably only insure somewhere in the neighborhood of 175 to 200 entities with the pool that is available. That is one of the reports that we have gotten so far.

Mr. LAUGHLIN. Mr. Fry, where do the businesses go to get insurance if we are going to require it and there is a limited capacity for insurance out there?

Mr. FRY. I think one of the things we have asked in our Advanced Notice of Proposed Rulemaking is for individual companies and groups to come in and talk to us about imaginative ways to provide this kind of financial responsibility.

We would like to look at any number of options, anything from groups working together, in order to provide the evidence of financial responsibility to other arrangements that the insurance companies may recommend in terms of pooling. We want to look at all those kinds of possibilities. That is why we have gone out with this ANPR.

Mr. LAUGHLIN. Do you think it is feasible for the groups to get together and pool their resources to do what Mr. Fry has suggested?

Mr. PAT TAYLOR. We have historically insured on Lloyds. I have been a customer of Lloyds of London since 1974. When this bill first passed, I was told by my Lloyds brokers that $150 million would be available to me, but not necessarily to other companies.

But that was before we learned that we had were not talking about insurance, we were talking about guarantees where the provider—in my case it would be Lloyds—would have to submit themselves to unlimited liability and the lack of State preemption. I have this in writing, and I will submit it for the record. The brokers have told me that coverage under OPA '90 is not only impossible, but I should understand that the coverage I have now specifically excludes any coverage related to the Oil Pollution Act of 1990.

So it is simply not available, and if it was available, if it was just a limit, as Mr. Fry says—and I can bear out what he said—the capacity in the world market simply is not there.

Mr. LAUGHLIN. Commissioner Mauro, what does the State of Texas do if these businesses you described in your testimony cannot get the insurance? What happens to the school fund and what do you do to replace those funds?

Mr. MAURO. We raise taxes, Mr. Chairman.

Mr. LAUGHLIN. Under the Coast Guard and EPA jurisdiction you have already implemented contingency plan requirements for facilities that you define as on shore. Does the broad coverage of Minerals Management Service's certificates of financial responsibility for offshore facilities include some of these same facilities?

Mr. SHEEHAN. The response plan requirement for offshore facilities is under Minerals Management Service. The requirement for onshore is under the Coast Guard and jointly owned, if you will, by EPA to a certain degree.

The question is, what would we do with things such as marinas? We would require, under certain circumstances, that response plans be required for marinas, but they would be declared offshore facilities. One is under Title I, what MMS is implementing and what the Coast Guard and Minerals Management Service are implementing with respect to response plans are under Title IV.

Mr. LAUGHLIN. Which way is it? Because in one instance we treat marinas as onshore and in another it is treated offshore. Do you all share any concern that you are going to put all these businesses out of business, where we are going to have substantial people added to the unemployment roles adding additional financial burdens on the government for which you and I work?

Mr. SHEEHAN. I would defer that question to my colleague, Mr. Fry, since it is the proposal for certificates of responsibility that is at issue.

In terms of the response plan issue, I think we have divided the responsibility quite well, and administratively that has not been a burden to the effected entities or facilities.

Mr. LAUGHLIN. Do you care to respond, Mr. Fry?

Mr. FRY. I have a great deal of concern about the matters that you have raised. I have a great deal of concern that if section 1016(c) of OPA 90 is as broad as some have suggested that it could have a devastating impact on a number of industries.

Mr. LAUGHLIN. I have a large number of questions I still need to address to the panel, but in fairness I want to turn to my colleague and good friend, the gentleman from North Carolina, to provide you with any questions he may have at this time.

Mr. COBLE. Thank you, Mr. Chairman.

This is indeed a significant issue, and you all have been a very forthright panel. I thank each of you for being here.

Mr. Chairman, I want to put a different spin on a question you addressed earlier. Let's play true or false here to begin with. The Coast Guard has not established final regulations to implement the requirement that oil vessels have certificates of financial responsibility because, generally, most insurers will currently not agree to become guarantors.

Mr. SHEEHAN. It is true that there have been substantial objections, but it is also true that there have been a number of proposals put forward to the last preliminary regulatory impact analysis which provides some alternatives to the traditional methods.

Mr. COBLE. Mr. Fry, let me shift gears for a minute. I think the Chairman put this question to you. Having said that is a true statement, do you believe or anticipate that many small independent oil producers and/or marinas will encounter similar bias as they attempt to obtain their Certificates of Financial Responsibility? My guess is yes, but I would like to hear what you think.

Mr. FRY. That would be my guess, also.

The reason we have the Advanced Notice Proposed Rulemaking is to solicit those comments and determine what the impact will be. The initial responses we have received seem to indicate that kind of a result.

Mr. COBLE. Mr. Taylor, I don't think you used the word balanced, but I think your testimony indicates that what we very sorely need in this exercise is balance.

Now the environment, as you all know—and I am not being critical to any individual or group collectively, but there is a group of people in this country who would like to see every smokestack silenced to date. They would like to see not one barrel of oil drilled effective today.

Conversely, there is another group who would like to see no rules or regulations at all applicable. Clearly, those two extremes I don't believe respond to problem. I think we need some balance here. You pretty well touched on that, Mr. Taylor, in your examples.

Having said that—and, Mr. Fry, I am not being critical of the Minerals Management Service—understand that, folks. Do you all individually or collectively believe that maybe representatives from the Minerals Management Service agency have misled the OPA, Oil Pollution Act, perhaps by maybe being too cautious in its interpretation, being very careful not to err by including what has traditionally been considered offshore facilities such as inland pipelines, small inland marinas that have been traditionally regarded as offshore facilities, a truck, if you will, crossing a bridge?

I am being technical now, but do you think you have overdone it? I will hear from any of you.

Mr. PAT TAYLOR. Mr. Chairman, I personally cannot believe that Congress intended for each and every—I happen to be a boater. I

am an environmentalist and I am involved in wildlife research, so I think I am in that middle that you are talking about.

I do not believe that its Congress truly intended for every marina—I don't think they intended for the heating oil jobbers in northern Virginia that supply the fuel or heating oil for your homes to be involved. But I think that any interpretation of the—I am advised by a number of lawyers that they are all involved.

Now if you are asking me personally who I want to see involved I will have to tell you, sir, that in my own case the more people I could hang together with the less likely chance I will have of being hung alone.

Mr. COBLE. Well, I am on record as having supported the Oil Pollution Act, but that was not my intent speaking for one-440 part of one half or one-third of the legislative gang you heard.

Does anybody else want to field that hot potato?

Mr. MAURO. Mr. Chairman, if I might add something. One of the things that disturbs me is we talk about the transporters of oil not being able to get insurance in the same breath as we talk about onshore and offshore facilities. There is one very distinct difference. The onshore facilities—the production facilities that we are talking about, in my judgment, could not do $150 million worth of damage, so it is unnecessary insurance. On the other hand, the transporters truly could and have proven repeatedly that they can do that much damage.

I spent last week in London with the P&I clubs and part of the previous week in Oslo with the Tankers Association. They ought to be held to the $150 million insurance requirements. I am convinced it makes sense for transporters but no sense for these other people. I went to all the hearings and I never heard about anybody except transporters.

I was not involved in the conference committee, so I don't know what happened. Something different took place between when the House and Senate hearings took place.

Mr. LAUGHLIN. Under your jurisdiction in the State of Texas you testified you have over four million acres of land offshore submerged where in some of it at least there is gas and oil production.

Mr. MAURO. That is true.

Mr. LAUGHLIN. Under your jurisdiction in the State of Texas do you have control and custody and day-to-day supervision of dry land, I guess that is a better way to put it in this environment, but of on-land oil and gas production?

Mr. MAURO. Some 17.8 million acres.

Mr. LAUGHLIN. At least you can come here with the authority of—from the State viewpoint of supervising onshore and offshore oil and gas operations, right?

Mr. MAURO. Yes, that is true. Our Oil Spill Prevention and Response Act differentiates between them as well. So, we have a lot of practical experience. We had some 800 oil spills last year in our jurisdiction.

The thing that disturbs me, Mr. Chairman, and I will go back to it, is these onshore facilities, production facilities, I can not come up with a scenario where they have need that much insurance.

Mr. LAUGHLIN. Are you not familiar with an oil and gas production platform in a national wildlife refuge down in Ransas County?

Mr. MAURO. Yes, sir. There is where the endangered species of North America winters each year. Not only am I familiar with the production in the Federal Wildlife Refuge, but we have had much production in the bays where the Whopping Cranes winter in, and we have some production on adjoining shores as well. It is a constant concern of ours in that particular area of Texas.

Mr. LAUGHLIN. From your vantage point as general land commissioner for these lands, do you have any notion or idea that it is necessary to require those facilities to provide $150 million in liability insurance?

Mr. MAURO. No, sir. But I will tell you this: We inspect the heck out of them. They run well and they have redundant safety precautions in place and specific mechanical means in place to solve any problems that might occur.

But if the worst case scenario would occur it would not be destructive to the cranes.

Mr. LAUGHLIN. You have a reputation, Commissioner Mauro, as a person concerned with the environment and protecting particularly the environment of the Gulf Coast of Texas. Under any scenario do you have any concerns that these oil and gas production facilities, either in the base or in the federally controlled wildlife refugees or in the State controlled lands, that there is an operation that would require $150 million in liability insurance other than the transporters that come in in tankers?

Mr. MAURO. Other than the transporters I do not have that concern, but only after thorough investigation of the facilities and the geology and the production potential involved.

I am much more concerned about south of us in the Campeche area where they have the high pressure production in Mexico.

Mr. LAUGHLIN. I will yield back to the gentleman.

Mr. COBLE. Mr. Mauro, you said you think transporters should, in fact, be required to have $150 million coverage. Now, do you want to go into the segregating situation here and say all of them or do you want to say the smaller ones, maybe the larger ones in excess of that? This becomes very delicate. I am not being critical of you.

Mr. MAURO. In my testimony I talk about risk ought to play a role. OPA 90 allows the Coast Guard to assess risk. I think that is suitable, the way the law is written.

Mr. COBLE. How about barges on inland waterways?

Mr. MAURO. I would punt to the Coast Guard to assess risk under the present law.

Mr. LAUGHLIN. Mr. Sheehan?

Mr. SHEEHAN. The way the law is currently written there is a sliding scale for a requirement for financial responsibility for transporters of oil. Generally, for tankers, for example, it is done on a $1,200-per-gross-ton basis.

To give you an indication, the largest tanker that would come into the U.S. would trade at the Louisiana offshore loop. That would require financial responsibility of about $296 million.

Mr. COBLE. Couple more questions if I may.

Mr. Fry, does your agency currently have the resources to incorporate enforcement financial responsibility requirements in your advanced notice of proposed rulings?

Mr. FRY. Traditionally, we have been an agency that is involved in the Federal offshore off of State coastlines. That is the kind of resources that we have. That is the business we have traditionally been in, and that is the business I would like to stay in.

We do not have the capability to start dealing with financial responsibility for marinas and for other activities that are on shore.

Mr. COBLE. That would have been my anticipated guess, but I wanted to hear it from you.

Finally, Mr. Buckley, did you say you all have the Gangplank? That is a good marina. I have been there several times and I can speak favorably for that. How many do you have in your association?

Mr. BUCKLEY. Forty-five in this country.

Mr. COBLE. Would any of those marinas in the group of 45 have the capability of coming up with a $150 million insurance package? Mr. Buckley, you may have said this in your testimony. I don't recall.

Mr. BUCKLEY. I was trying to work out the math. We have been talking about figures here on this table certainly between $150 and $200 million cost of insurance coverage.

Let's take the low number first. If we look at the one huge $150,000 cost for an insurance policy I know that most of our facilities don't even make that much money on their fuel docks to be able to afford the cost of the insurance.

Mr. COBLE. Thank you.

Mr. Chairman, in yielding back to you I hope nobody leaves this hearing today thinking that you and I are up here being very casual about oil pollution. I don't think that is the case at all, but I think we need to lay some common sense into this approach as we negotiate what appears to be shoal waters.

Mr. Taylor?

Mr. PAT TAYLOR. Mr. Chairman, if the independent oil operators in the Gulf were treated with the same sliding scale based on risk and balance, Mr. Chairman, Mr. Coble, that you mentioned, we would not have no objection whatsoever. I think even marinas can stand $67.50 a barrel in financial responsibility.

On any of my offshore platforms, if you look at the amount of oil stored at any one time, which is negligible because we produce into pipelines, if you look at the possible maximum spill from any of my facilities—and I produce about 2,300 barrels a day from 16 platforms scattered over thousands of square miles—there is no way that any single facility of mine is going to spill any more than a handful of barrels.

So, if we were to be treated as tankers or even with a minimum of $10 million dollars—and I am not suggesting this for marinas because they cannot afford it—but a $10 million minimum, yes, I think that would be absolutely acceptable to us. We can live with that, and that would far more than cover the maximum possible risk of our operations either production or drilling.

Mr. COBLE. Assessment of risk is going to need much attention. You——

Mr. SHIVELY. The problem in rural Alaska means expanding the definition to wetlands. I have never tried to drive a ship on wetlands, but somebody has another idea.

Mr. COBLE. You might want to learn how to do that one of these days.

Mr. SHIVELY. We have enough problems. For us, solving the problem means taking the wetlands out of the definition. Then the problem disappears in rural Alaska. We are not saying affairs in rural Alaska should not be regulated. We are regulated by the Coast Guard, State Department of the Environmental Conservation, the Fire Marshal, the Corps of Engineers, at some times, and the Alaska Department of Fish and Game.

So we are not trying to say there should be no regulation, but you would solve our problem by taking the wetlands out of the definition.

Mr. COBLE. Thank you all very much. I think this has been a good hearing.

Mr. LAUGHLIN. Thank you, Mr. Coble.

Commissioner Mauro, as you testified before, many operations in Texas are small, producing 50 barrels or less a day under minimal pressure, and many requiring lifting operations.

Isn't the risk of a blow-out greater where there is a lot of pressure on a well such as happened several years ago on the IXTOC incident and further in your view that the low pressures wells posed much less of a threat than the high pressure wells, shouldn't we focus our attention on the high pressure wells, many of which are located in the Mexican waters? And what are your thoughts on opening a dialog with Mexico and P-Mex on these issues?

Mr. MAURO. I know of no high pressure well in Texas waters. There is limited high pressure, I think, on some of the Federal Minerals Management Service production. I would like to see, as I said in my testimony, some kind of risk assessment similar to what the Coast Guard is already doing to come up with some reasonable limits.

I think we have a much greater risk of a problem with a repeat of the Campeche incident that occurred with the IXTOC, which was the third largest spill in the history world, than we have in anything happening in Federal waters or in Texas.

I think any viable look at making certain we don't have a catastrophic spill in the Gulf of Mexico would require special attention be given to the Mexican production in particular.

Mr. LAUGHLIN. If you were asked to rank tankers with loading facilities, pipelines, marinas and oil wells and turn from the environment from oil spills, where would we come out in your risk assessment?

Mr. MAURO. I think the tankers are the biggest problem, particularly the gigantic tankers that now lie there offshore. As you probably know, most bays in Texas, most of our ports are not big enough for the really big ships.

So we have about 60 lightering operations that occur every month within fifty miles of Galveston. That is much more dangerous than any production facility, a quantum jump more dangerous than the risk in an offloading facility, but I rank that second behind the tankers.

Mr. LAUGHLIN. Mr. Fry, why has MMS chosen to find a responsible party in such a way as to include not only those individuals engaged in the oil and gas lease and production activities in OCS, but

also those individuals who own and operate fuel storage tanks, marinas and other small coastal facilities when, in view of OPA 90, "responsible parties" has been defined under onshore as any person owning and operating a facility, except a Federal agency, and under offshore which has defined responsible party as the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law?

I ask you when you look at that comparison, hadn't the Minerals Management Service definition gone far beyond what is in the statute.

Mr. FRY. The Minerals Management Service does not have a definition and has not taken a position on one. That is the purpose of the ANPR, to try to understand what peoples's positions were on that subject matter.

I will point out—and this is not dispositive of this question—but as you were reading that definition or that part of the definition that talks about "permittees under State law and licensees under State law," that there are those who have suggested to us that, because of that phrase, the definition of "responsible parties" is a broad definition. I am not sure that is the case, but there is certainly language there in that definition as you read it that talks in terms of permittees of the State that gives some indication that it may be something more than just the Federal offshore.

Let me see if I can sum up where we are in this process. The Minerals Management Service has not taken a position on this subject matter. We have gone out with this ANPR to try to solicit comments from anyone and everyone potentially affected because our concern is that section 1016(c) of the statute may be very broad.

We want to share that information with this committee and with the Congress in terms of what we learn. Then, based on what we learn, we will try to take appropriate action.

The Minerals Management Service has not made a decision about the reading or the implementation of this statute.

Mr. LAUGHLIN. Do you think there is any evidence in the legislative history of OPA 90 that Congress intended the financial responsibility requirement to apply to traditional onshore facilities?

Mr. FRY. I don't think there is any indication of that. It may be that the clear language of the statute leads us to the conclusion that something more than just the Federal offshore is to be included.

Mr. LAUGHLIN. Do you think any onshore responsibility could produce a probability of more than $150 million of damages? It is my understanding that the cost of an inland facility was only $30 million in damages.

Mr. FRY. We have no experience in that, I have no idea what the costs would be, but I cannot imagine there would be a spill that would cost $150 million there.

Mr. LAUGHLIN. Is there some Federal agency that you could go to and determine that and provide it for the record?

Mr. FRY. We probably could. The Department of Transportation regulates onshore pipelines. They probably have some information on that. We will see if we can get some information from them to provide to the committee.

[The information may be found at end of hearing.]

Mr. LAUGHLIN. Do you think Minerals Management Service can deal with problems of OPA 90 created administratively while addressing all the issues that have been addressed here today?

Mr. FRY. If the question is, can we deal with it, the answer is—if we have to, we will. My concern is we have a law, and it is our obligation to enforce that law. If the law gives us some discretion, we will certainly use that discretion to implement it in the most reasonable and balanced way possible. That is what we are looking toward.

If there is not that discretion and we feel there is not that discretion, we will certainly let this committee know and other Members of the Congress so we can decide what other appropriate action might be needed in order to remedy the situation.

Mr. LAUGHLIN. How does the potential liability that OPA 90 poses compare with the insurance industry's capacity to underwrite this liability?

Mr. FRY. I don't think the insurance industry, from what they have indicated to us and their comments, has the ability to underwrite this insurance.

Mr. LAUGHLIN. Do you agree with the testimony of Commissioner Mauro and Mr. Taylor that all offshore operations do not possess the same risks to the environment of cleanup costs?

Mr. FRY. Absolutely. Unfortunately, when this Act was passed, there was discretion given to the Coast Guard, in terms of "tankers" in terms of reducing financial responsibility based on risk, but not for "offshore facilities".

Mr. LAUGHLIN. I take it you join the chorus of voices that recommend flexibility.

Mr. FRY. Absolutely.

Mr. LAUGHLIN. Who would be covered by the Certificate of Financial Responsibility requirements and would you include Mr. Buckley's mom and pop operations, many of which in my district would be glad to have $150,000.

Mr. FRY. Include them? We have made no decision on that. That is why we are doing an Advance Notice of Proposed Rulemaking so people like Mr. Buckley can tell us whether they think they are included or not included. Because of the broad implications of this section of the law, we have tried to go much beyond our traditional constituencies in order to make sure we have input from everyone who might be affected.

To the extent that people can bring us information as to why they should or should not be, we want to hear that.

Mr. LAUGHLIN. Mr. Taylor, what others on the oil and gas could be affected by the strict implementation of OPA 90, especially Certificates of Financial Responsibility?

Mr. PAT TAYLOR. If it includes the marinas and pipelines across the Nation, it would have a much broader effect than it could if it just involved the offshore. If you put us out of business you are simply going to spend much much more on unemployment insurance and imported oil. I recognize that.

If you are talking about the act as we interpret it ourselves, which does include the marinas and the suppliers and everyone

else, it would be hard for me to think of an industry or a household or a school or a Federal office building that would not be impacted.

The majors are not going to take over. They are not going to continue producing what we are producing in the Gulf. They are not going to drill what we drill in the Gulf. And they are not going to take over the distribution infrastructure within the United States. That is left up to us mom and pop operators, and we do a dad gone good job of it.

Mr. LAUGHLIN. Before recognizing the gentleman from Mississippi, Mr. Taylor, I would say to Mr. Taylor, the witness that you have already declared since you declared you are a Texan, we will not ask you to come in on any responsibility for financial relationship to the gentleman from Mississippi, Mr. Taylor, I would say to Mr. Taylor, the witness, that you have already publicly declared you are a Texan and you live, work, and operate in Louisiana. We will not ask you to comment on any financial responsibility for a potential relationship to the gentleman from Mississippi.

Mr. PAT TAYLOR. Mr. Chairman, if I may correct you, Mississippi is actually my residence of choice. I spend more time in Mississippi, Mr. Chairman.

Mr. LAUGHLIN. Then perhaps we should give you a comment period to deny any potential financial responsibility of being associated with the very nice gentlemen from Mississippi.

Mr. Taylor, it is your time.

Mr. GENE TAYLOR. A quick check of Mr. Taylor's financial resources would prove without a doubt that he could not be related to me. Anybody who has more than is $100 in the bank could not be related to me.

I want to thank all of your for being here. I share Mr. Taylor's concerns and I am sure others' concerns.

Going back to my days in the Coast Guard, I thought at the time there was a reasonable approach taken that required different levels of enforcement and different levels of protection based on the size of the waterfront facility and the amount of oil and particular chemicals that were passing through that facility.

I want to echo the comments of others who have expressed concern that even a shrimp processing plant with 10,000 gallons of fuel or even a small family-owned marina that may only have a 1,000 gallon tank would be lumped into the same boat with the Pascagoula refinery for Chevron or the Exxon refinery in Baton Rouge. I can see the difference in the different levels of possible spills. I hope those of you who are putting the rulings together can differentiate between the two.

I would like to open that up to the panel for comments.

Mr. FRY. To the extent we have the ability to make those differentiations we will do that.

Unfortunately, one of the concerns we have is that OPA 90 does not give us much room to say that one offshore facility is different from another offshore facility. Instead, if you fall under the definition of "offshore facilities", then you should have $150 million of financial responsibility. That is what section 1016(c) requires.

Mr. GENE TAYLOR. Mr. Fry, if you would, are you yourself one of the key players in putting these regulations together?

Mr. FRY. Yes, sir.

Mr. GENE TAYLOR. I would appreciate any suggested language from you as far as a change in that.

Obviously, the Oil Pollution Act was a very, very large, very thick and, hopefully, well-intended piece of legislation, but, like anything else built by human hands, it will have some mistakes in it. I am certainly willing to rectify those mistakes. That would obviously be a gross mistake on the part of Congress. That needs to be addressed.

Some Members of this body would say no, the only thing we can do by reopening OPA 90 is make it worse. Then they should not be here.

Mr. FRY. We will be glad to work with you, Mr. Taylor.

Mr. GENE TAYLOR. My next question is, does the law allow for different levels of responsibility based on the amount of oil or chemical products being transported? For example, if I recall, mates and pilots are licensed up to a certain tonnage.

When I was in the Coast Guard the tanker men were licensed up to different amounts that they would be responsible for. Does this law have different liability with different amounts of product being shipped or, for example, is one barge being thrown into the same category with ultra-large carriers?

Mr. SHEEHAN. There is a sliding scale depending on the type of vessels. If you are a tank vessel it is normally $1,200 a gross ton. For a dry cargo vessel or nontank vessel you start at $300 a gross ton, and then it is $600 per gross ton. So there is a sliding scale with respect to transport.

Mr. GENE TAYLOR. Who on this panel would be oil or chemical business or the transporters? Only Mr. Taylor?

Mr. PAT TAYLOR. I am an oil producer. I do not transport oil.

Mr. GENE TAYLOR. I am curious, and I will throw it out to the panel because you are representing different elements of the industry. I think the OPA 90 was well-intentioned, but it is not a perfect piece of legislation.

Going back to the most simplistic of analogies to the law, there are some laws that provide for a carrot, we give you a financial inducement to do something. Most laws just call for a stick. Thou shall not. If you break the law, this is the penalty for doing that.

I am particularly concerned about the OPA 90 only taking a stick approach. I was curious if it is hard to get people into double-hull barges and tankers since we know that about 95 percent of the spills can be prevented with a doubled hull. Most of them result from relatively minor collisions.

What would be the opinion of this panel to an effort to lower the liability for those carriers who voluntarily go to double-hulled tankers or barges prior to the enactment date of the year 2010 or 2015 as an inducement for them to try to prevent spills rather than for them to wait to make a mistake, and beating them over the head and depriving them of whatever amount of money they made in their lifetimes with the fines.

Mr. Fry, you have a nice smile on your face.

Mr. FRY. I was glad you asked that question because that is the Coast Guard's question.

Mr. SHEEHAN. I was hoping you would have an answer.

Mr. GENE TAYLOR. I am all in favor of it. I was curious what the panel's opinion is.

Mr. SHEEHAN. One of the inducements that, to my mind, the Oil Pollution Act does have with respect to making vessel owners go to the double-hulled barges and double-hulled tank vessels before the staggered implementation date, is the fact that there already is a high liability level which would be directed at those vessel operators.

I think that if a vessel operator—and this is my own opinion—that if a vessel operator is looking to reduce his actual liability that would be a good thing for him to do, to build a double-hulled vessel early on. I think the incentive is already there.

Mr. GENE TAYLOR. Mr. Sheehan, how would you respond to the apparent fact that the orders for double-hulled tankers just are not there? There have been some orders for double-hulled barges, but as far as the largest vessels, those the most capable of providing a catastrophic spill, to my knowledge there is not a single order out there.

Either the carriers are counting on a change of heart in their Congress and the law being repealed—the carriers might be counting on a change in administrators who would not enforce the law, which is another distinct possibility, or I have heard some talk that many of the carriers, at least those who are not involved in the Jones Act or inland but involved internationally, have already figured out a way of chartering corporations in the Bahamas and therefore limiting their liability.

I think the proof is in the pudding. I did not see any orders for double-hulled tankers. Who would respond to that?

Mr. SHEEHAN. I was in a seminar in New York last week discussing OPA 90. One of the presenters indicated that there were on the order books now 35 orders for double-hulled tankers. I believe Mobil received delivery of one for 300,000 dead weight tons for use here in the United States. The speaker at the time indicated that part of the problem with the process is simply that there is still substantial overtonnage in the marketplace. Much of the better tonnage, the principal tonnage is being used to come to the U.S. Some of the overtonnage is going elsewhere.

Mr. GENE TAYLOR. Does anyone on the panel have an idea what increase in actual cargo rates has occurred or is anticipated to occur as a result of the passage and, in turn, the unlimited liability of the Oil Pollution Act of 1990?

Mr. MAURO. Mr. Taylor, the week before last I told the panel before you came that I spent some time in London with the P&I club and some time in Oslo talking about the Norwegian tankers. The Norwegians were particularly concerned because they say they are buying and building double-hulled tankers, and they are pointing to American-controlled companies, particularly in the Middle East, that are not. They are very concerned about that.

Secondly, they kept saying, we figured it out, and even at the worst-rate scenario you are talking about .4 of a cent gasoline. Less than half a cent a gallon would more than pay for the coverage we are talking about.

In my part of Texas we are ready to pay four-tenths of one cent for protection of the Gulf, for tankers. I think that is totally rea-

sonable. In my part of the world there are not many folks who would be unwilling to pay the half-cent-for-gasoline difference to assure that the tankers will be properly covered when they go in the Gulf of Mexico.

Mr. GENE TAYLOR. I will use the analogy of your home or my personal health. I don't smoke. Therefore, I get a reduced rate on my life insurance. I have smoke detectors in my house. Therefore, I get a reduced rate on my fire insurance. What would it take as far as reduction in rates to generate the financial interest for people to voluntarily go to double hulls before the deadline? Can it be computed?

At some point there has to be enough savings, though, where people could put the savings in a capital investment, something tangible they can hold only to for 20 years called a tanker rather than just paying premiums on an insurance policy.

Mr. MAURO. If you would ask that kind of speculative question to the Texas Land Commission, I will speculate on an answer.

CONOCO has already gone to 100 percent double hulls in its entire tankers. They are 100 percent. I think they think they did it for all the right reasons, particularly the right reasons where they can run ads about it and brag about it and talk about corporate responsibility and being a good citizen. I think that is the best carrot. I think you will see more and more people go to double hulls for that reason.

I expect the insurance people and the P&I clubs to start talking about breaks for double hulls at some point. I think it is too early in the process.

We didn't always get breaks on smokers insurance until the Surgeon General came out with a number of reports documenting the fact that not smoking did lower health costs, et cetera.

I think this is too early in the process to see those kinds of real bottom line figures come forth. In the short run I think the good corporate citizen and the responsibilities are already working in our favor.

Mr. GENE TAYLOR. I appreciate you saying that, but the evidence is not here, contrary to the statement of this gentleman over here.

The gentleman over here said he met regularly with the shipbuilders and he didn't know of one.

Mr. MAURO. Maybe we don't have any good corporate citizens in that area.

Mr. GENE TAYLOR. Quite frankly, I would disagree with that.

Mr. MAURO. If the Norwegians can do it why not the Americans?

Mr. GENE TAYLOR. If we can prevent a spill as a Nation we are a hell of a lot better off than beating somebody over the head after they have caused a spill.

Thank you, Mr. Chairman.

Mr. LAUGHLIN. Mr. Fry, where did the Minerals Management Service get the definition of navigable waters?

Mr. FRY. From the statute.

Mr. LAUGHLIN. Nowhere else?

Mr. FRY. It is the thing we all learn the second year of law school about the commerce clause and what are the navigable waters of the United States. Someone suggested it may be when there is water on the ground after a big rain. But certainly it is the

traditional definition of navigable waters, and it is very broad and includes almost every stream in this country.

Mr. LAUGHLIN. Can you determine whether Minerals Management Service has flexibility to adopt the definition of waters of the United States that is different from the one used by the Corps of Engineers, EPA, Fish and Wildlife Service and the Department of Agriculture under the Clean Water Act? Can you supply that for the record, unless you can speak to that now?

Mr. FRY. I would just as soon not speak to that. I will be glad to provide that.

[The information may be found at end of hearing.]

Mr. LAUGHLIN. You can provide it then. That is acceptable. Are you familiar with the fact that revenues from the oil and gas operations in the Gulf of Mexico are second only to the Federal income tax in producing revenues to the Federal Government?

Mr. FRY. I am very familiar with that since that is the Minerals Management Service's job. We collect all those revenues.

Mr. LAUGHLIN. Mr. Hebert, does the potential loss of revenues from royalties and taxes—does the Minerals Management Service's rule propose any concerns for your State about the expanded jurisdiction in the State waters?

Mr. HEBERT. Most definitely. Recent statistics promulgated by the Louisiana Department of Natural Resources indicate that 95 percent of the State gas produced in State waters would be affected by this ruling.

As I testified earlier, assuming a cost of $20 per $1,000 of coverage per year and that the operator was operating at a net profit of $3 per, only 37 of 2,000 operators in the State of Louisiana could afford that coverage. It would totally devastate Louisiana oil and gas production as we know it.

Mr. LAUGHLIN. What would this rule do as it is implemented on the Louisiana State budget?

Mr. HEBERT. We stand to lose $642 million in mineral revenues and royalties there.

Mr. LAUGHLIN. Do you have an opinion as to what this rule would do in other States that do not have oil and gas production activity if it was written as it is now written?

Mr. HEBERT. A very general opinion. The ripple effect of any downturn in production on the domestic side always resonates very far into the economy and inland operations. From that perspective, consumer prices would go up, but most importantly is that, and this needs to be accentuated, that the production loss would not be made up domestically. It would result in an increase in the importation of oil. Whenever we do that, we will always continually increase the risk of a major oil spill wherever that oil is transported. We need to focus on that.

Mr. LAUGHLIN. Commissioner Mauro, have you accumulated any statistical information on the impact of this rule as far as it would impact the commercial fishing and shrimping industry in the Gulf of Mexico?

Mr. MAURO. I have been told that it will put most of the commercial fishermen out of business because they will not be able to attain fuel at a reasonable price. It is much the same thing as the gentlemen from Alaska talked about.

Mr. LAUGHLIN. You are including the shrimping in that?

Mr. MAURO. Yes. The shrimpers are the biggest part of the our fishing industry. They would be out of business. The cost of fuel is their variable.

Mr. LAUGHLIN. Do you share safety concerns that other witnesses had that if this rule were impacted some of the shrimpers or barge operators or fishing boats or recreational vehicles would carry larger containers of fuel on board?

The reason I ask that was in the 1973 gas crunch when we had long lines I had a cousin who was killed in a very simple accident where she and her husband put several cans of gasoline in the backseat of their automobile, and in a very simple wreck where no one should have been hurt, she was burned to death because of this explosion of gasoline in the back seat.

Do you have concern for safety on our recreational boaters or small boaters on this?

Mr. MAURO. If we start shutting marinas down, people will have to find some way to refuel. The obvious way is to increase the capacity of the fuel on board. So I think that is a very real concern from a safety viewpoint.

Mr. LAUGHLIN. Mr. Shively, you stated that the Northwest Alaskan Native Association represents one of 13 regional corporations in Alaska and that most are located in remote areas with no road access. If this rule is implemented as is, how else would you provide fuel and energy to these remote communities in your State?

Mr. SHIVELY. I don't see how you could do it since all facilities—any time you would be distributing fuel you would have a facility and that facility would have to have $150 million worth of coverage. It just could not happen.

Mr. LAUGHLIN. Would these Native American communities be able to afford any amount of liability insurance coverage?

Mr. SHIVELY. Currently, we provide some liability on our own facilities. Our cost right now is about $12,000 to $13,000 a year for, I think, a $1 million limit. Although I would suspect that, as others have said, the Oil Pollution Act of 1990 is excluded from that coverage, but there is ability to get reasonable coverage, given the size of the project. But, as other people have said, you have to give some effect to the risk involved. When you only have from 120,000 to 200,000 gallons of fuel in a number of separate tanks you don't have a $150 million problem.

Mr. LAUGHLIN. Have any of the communities in Alaska or the ones you represent experienced any spills in their facilities in the past? And, if so, what has been the cost of cleanup payment for damages?

Mr. SHIVELY. The largest recent spill occurred in Bethel which is a community of 4,000. They had a large fuel spill, and it cost, I believe, about $4 million to $5 million for the government to clean it up.

Mr. LAUGHLIN. That is all the questions I have of the panel.

Mr. Taylor, do you have any more?

Mr. GENE TAYLOR. Getting back to Mr. Fry, I realize that a lot of the potential problems facing the marinas are going to be because of the term onshore facility. The one I read—heard, you have a definite conflict between the definition of onshore and offshore.

Looking at page two of your testimony I would think that you have more than enough leeway at that point to exclude marinas under the definition of onshore?

Mr. FRY. Are you referring to paragraph three on page two?

Mr. GENE TAYLOR. Yes, sir. And going on down in the last paragraph.

Mr. FRY. First off, OPA 90 has defined "OCS facility", which is our traditional area of operation. The OCS facilities are engaged in what I called the Federal offshore. There is also a definition of "offshore facilities" that includes any facility of any kind located in, on, or under the waters of the United States, including the navigable waters.

As pointed out in my testimony, there was some language that came out of the OPA 90 Conference Report that talked about "to the extent certain types of facilities are deemed to be part of an onshore facility under the Clean Water Act, they are an onshore facility under OPA".

Mr. GENE TAYLOR. A dock-side marina on the land is not on the water, is not in the water and not under the water. I am having a little trouble with your taking a great deal of liberty with what is written here in the law.

Mr. FRY. We have not made a decision as to what is covered and what is not. Is your suggestion that if a marina does not have pylons that go into the water then it is not over the water? I don't know.

Mr. GENE TAYLOR. I hope that the people implementing this legislation would have enough sense to see if a tank is on the land, surrounded by a bulkhead to catch it in case of a spill, that that is clearly not offshore.

Mr. FRY. I don't think there is any question that if it is not on the water it is not covered by section 1016(c). The section specifically says it needs to be associated with the water.

Mr. GENE TAYLOR. I just wanted to get that very clear while we had you.

Mr. SHIVELY. On the water, if you include wetlands, means in many cases on land. The definition of wetlands is one we could do without.

Mr. GENE TAYLOR. Let's not go crazy with this one. You want to serve the public. Wetlands is not a navigable waterway.

Mr. FRY. Unfortunately, what the lawyers tell me is that the definition of "navigable waters" could include wetlands. That is the definition that has come through a great deal of case law and a great deal of litigation and is now part of the nationally accepted definition of "navigable waters".

Mr. GENE TAYLOR. Does the OPA 90 define navigable waters or refer to it by way of case law?

Mr. FRY. It does neither. It says the navigable waters of the United States.

Mr. GENE TAYLOR. So what you would be doing then is writing a law based not on congressional intent but on a court ruling. In effect, we might as well not be here and just let the folks across the street in the black robes make the law.

Mr. FRY. If there is clear congressional intent that should be considered. But what the lawyers have told me is in the absence of

clear congressional intent or even if there is intent, the plain language of the legislation still has to take precedence.

Mr. GENE TAYLOR. Which says navigable waters?

Mr. FRY. That is correct.

Mr. GENE TAYLOR. So you would automatically go with the court ruling rather than the term navigable waters?

Mr. FRY. If there is nothing else to help us determine that, that is correct. That is what the lawyers tell me.

Mr. GENE TAYLOR. Where did you find these lawyers?

Mr. FRY. Interestingly enough, they were with the Department of Interior when I got there. I inherited them. They are a fine group of people, by the way.

Mr. GENE TAYLOR. Have any of your lawyers ever piloted a vessel through the wetlands?

Mr. FRY. I don't know.

Mr. GENE TAYLOR. Why don't you go back and ask them and see if that still becomes a navigable water in their minds.

Mr. Buckley, were you going to say something?

Mr. BUCKLEY. As a marine operator who dispenses fuel in certain arenas I have heard now that there is a different definition of a marina and an offshore and onshore facility. It seems to circle around where the fuel tanks are located. I know most of the marinas we have are located on the waterfront. We need to be on the water. We are a use that definitely needs the water. All of our fuel tanks happen to be on land because we are regulated that way.

Therefore, from what you, Mr. Taylor, have said and from what Mr. Fry has said I understand, that because our fuel tanks are on land we are classified as an onshore facility.

Mr. GENE TAYLOR. That would be my intention entirely, Mr. Buckley.

Mr. Buckley, it stands to reason—I mean, if it is on land you have, A, greatly diminished your liability or your potential for a water-borne collision to cause a problem; and, B, if there is a spill you are surrounded by a retaining wall; and, C, you are probably being taxed for it as being on land and not on the water. Then you should not face the same liability as a trucker that is standing on pylons out in the middle of the Gulf of Mexico. That stand to reason.

Mr. BUCKLEY. I agree with you, but the marina is half on the land and half on the water. The boats have to be on the water, and the facilities for serving those boats have to be on land.

Mr. GENE TAYLOR. I intend to work with Mr. Fry and other people from his organization to see to it that a law that was passed with the intention of protecting the American public, and hopefully protecting the environment does not go to such an extreme that every boat owner in American is demanding the repeal. That far too often has been the case in this country. Some common sense has to prevail and if we have to do some fine tuning of the law or some fine tuning of the regulations we will do so.

Mr. LAUGHLIN. Mr. Fry, as I listened to the exchange between you and the gentleman from Mississippi it occurs to me maybe you ought to follow Shakespeare's advice, go shoot all the lawyers first. I want to have an exclusion for Commissioner Mauro and I, since we both graduated from the same college and the same law school.

Mr. FRY. Being a former lawyer from the State of Texas, now a recovering lawyer from the State of Texas, I wish to be excluded too.

Mr. LAUGHLIN. At this time, I will announce that two statements will be made a part of the record of this hearing, the statement sent to us by the International Association of Drilling Contractors located in Houston, Texas, and the statement of Robert McManus on behalf of the Texas Shrimp Association, representing the shrimpers in Texas and the rest of the Gulf of Mexico.

[The statements may be found at end of hearing.]

Mr. LAUGHLIN. The record of this hearing will remain open for 30 days from today's date for additional comments that any of the participants or anyone interested in the contents of this hearing may want to submit to the hearing.

With that, I want to thank all the distinguished members of this panel. You have been very informative and contributed a great deal to this hearing.

The hearing is adjourned.

[Whereupon, at 4:33 p.m., the joint subcommittee was adjourned; and the following was submitted for the record:]

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–20613 Filed 8–24–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

RIN 1010–AB78

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is announcing its intention to publish regulations governing the establishment of financial responsibility for offshore oil facilities and gas facilities with concurrent gas condensate production, and requests comments from interested parties. This action is necessary to ensure that parties responsible for offshore oil and gas facilities are able to meet the financial responsibility requirements of the Oil Pollution Act of 1990 (OPA 90). These regulations will establish a level of financial responsibility at $150 million for all offshore facilities in, on, or under the navigable waters of the United States (U.S.).

DATES: Comments should be received or postmarked by October 25, 1993 to receive full consideration.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: William S. Cook, Chief, Inspection and Enforcement Branch, telephone (703) 787–1610 or FAX (703) 787–1575.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) is developing new regulations to implement Title I and section 4303 of OPA 90 (33 U.S.C. 2701) for offshore facilities in navigable waters of the U.S. These regulations will:

- Establish the amount of oil spill financial responsibility that must be evidenced by responsible parties at $150 million;
- Establish requirements for certification of financial responsibility for all "offshore facilities" (as defined in OPA 90) including those in, on, or under any navigable waters, including inland waters, of the States of the U.S., territories, and possessions, and facilities subject to U.S. jurisdiction in, on, or under any other waters.
- Define acceptable methods available to demonstrate evidence of oil spill financial responsibility;
- Define procedures to be used to submit evidence of oil spill financial responsibility;
- Define responsibilities, liabilities, and defenses of guarantors;
- Establish the maximum civil penalties to which responsible parties are subject as $25,000 per day of violation; and
- Establish civil penalties procedures.

The MMS solicits information and comments on OPA 90 issues, and MMS' preliminary interpretation of the OPA 90 requirements. Commentors should propose solutions to any problems they anticipate in complying with the OPA 90 requirements. The MMS is also seeking information on the effect of the new OPA 90 requirements on the oil, financial, and insurance industries; how MMS can best utilize the administrative expertise and experience of State regulatory agencies; and the concerns of environmental groups and other interested parties.

In August 1990, Congress passed OPA 90 which contains various provisions aimed at:

- Strengthening oil spill prevention, response capability, and cleanup efforts.
- Ensuring payment of damages resulting from oil spills.

Title III of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978 (OCSLAA 78) was repealed and the Federal Water Pollution Control Act and the Deepwater Port Act of 1974 were amended by OPA 90. To implement the authority under OPA 90, Executive Order (E.O.) 12777 was signed by the President on October 18, 1991, and was published in the Federal Register on October 22, 1991 (56 FR 54757). The E.O. delegated certain responsibilities to the Secretary of the Interior, including responsibilities relative to ensuring evidence of financial responsibility for companies operating offshore facilities on the OCS and other U.S. navigable waters. The Secretary subsequently redelegated these responsibilities to the Director, MMS.

A similar function was previously performed by the U.S. Coast Guard (USCG) on OCS waters under the authority of Title III of OCSLAA 78, and implemented by 33 CFR part 135 provides that the regulations in 33 CFR part 135 be continued effective until new offshore financial responsibility regulations are promulgated. On October 1, 1992, a memorandum of agreement (MOA) was signed transferring the personnel, equipment, and files associated with the function to the MMS in furtherance of the delegations in E.O. 12777.

Affected Facilities

The definition of "facility" in OPA 90 (section 1001(9)) includes all structures, equipment, or devices, other than vessels and deep water ports, used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term specifically includes pipelines. For the purposes of administering section 1016 of OPA 90, the MMS will apply financial responsibility requirements, in the case of offshore facilities other than pipelines, to the lessee or permittee of the area in which the facility is located or the holders of a right of use and easement granted under applicable State law or the OCS Lands Act for the area in which the facility is located. In the case of pipelines, the MMS will apply financial responsibility requirements to any person owning or operating pipelines located in, on, or under the navigable waters of the U.S. Under E.O. 12777, the responsibility for Deepwater Ports has been assigned to the Department of Transportation.

Geographic Jurisdiction

The financial responsibility requirements for offshore facilities under OPA 90 apply to all U.S. navigable waters. The law (OPA 90) defines U.S. navigable waters as the waters of the U.S. including the territorial sea. This includes all of the States of the U.S., the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the U.S. Also, these new authorities and responsibilities apply to offshore facilities that the MMS currently regulates for oil and gas operations in the OCS.

Through its definition of the terms "navigable waters of the United States," and "offshore facility" in section 1001(22), OPA 90 extends its provisions concerning offshore facilities to facilities in, on, or under navigable waters of the U.S. and any facilities subject to the jurisdiction of the U.S. in, on, or under other waters. Thus, for example, a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the $150 million financial responsibility provisions of this rule, as would the operator of an oil well in the Great Lakes.

Implementation Procedures

In developing regulations to implement the oil spill financial responsibility requirements of OPA 90, the MMS will need to determine whether the following concepts in the existing regulations at 33 CFR part 135 can be used to address the responsibilities delegated under E.O. 12777:

- Evidence of financial responsibility may be provided by one or more Guarantors for one or more offshore facilities of a particular responsible party.
- Where multiple responsible parties own an offshore facility, evidence of financial responsibility may be established and maintained on behalf of all of the parties by that party designated as the lead responsible party.
- When evidence of financial responsibility is established in a consolidated form, the proportional share of each Guarantor must be shown.
- Each responsible party of an offshore facility is subject to civil penalties and/or referral to the Department of Justice if the required evidence of financial responsibility is not established and maintained.
- Evidence of financial responsibility may be established and maintained by any one or any combination of acceptable methods.
- Individual insurance underwriters, indemnitors, and bonding companies are subject to direct action to the extent of their contracts, indemnity coverage, or bond.

Solicited Information

Responses to the following questions are requested to assist MMS in formulating the requirements to implement OPA 90. In addition, to help fulfill its responsibilities for determining the economic effects of regulations, MMS requests information that can be used to determine the potential economic effect of this rulemaking on the oil and gas, the pipeline, the insurance, the fishing, the tourism, and other industries.

1. The MMS solicits information on the types and locations of facilities that may be subject to the offshore financial responsibility requirements of OPA 90. The OPA 90 defines an offshore facility as any facility of any kind located in, on, or under any of the navigable waters of the U.S., and any facility of any kind which is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel. In addition, OPA 90 defines a facility as any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes. Comments are invited on whether or not, and if not why not, this definition includes:

—Pipelines crossing over bodies of water on bridges, piers, breakwaters, berms, or similar structures.
—Fuel storage tanks, piping, and hoses installed in, on (i.e., in contact with or supported above), or under navigable waters, including those facilities in private marinas.
—Pipelines in, on, or under inland navigable waters but not crossing the inland navigable waters.
—Pipelines that cross in, on, or under both land masses and inland navigable waters.
—Pipelines that cross under inland navigable waters in tunnels or are surrounded by other impermeable barriers.
—Pipelines that cross the waters of the U.S. and the waters of another country.
—Drill strings, flow lines, or production casing extending under navigable waters but originating from land-based drilling and production facilities.
—Other structures to which the applicability of OPA 90 may be unclear.

2. Section 1016(a) of OPA 90, and 33 CFR part 135 enumerate the following potential ways of demonstrating financial responsibility:

—Insurance;
—Guaranty;
—Indemnity;
—Surety bond;
—Letters of credit;
—Qualification as self-insurer; or
—Any combination of the above methods.

What additional methods of demonstrating evidence of the $150 million level of financial responsibility exist to enable responsible parties and guarantors to meet the requirement? Do all of these methods provide equal assurance that all claims will be paid in a timely manner?

3. Section 1019 of OPA 90 states, "A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 1016." The MMS is seeking comments on:

—Existing State programs that can be demonstrated to be equivalent to OPA 90.
—Other State programs that address oil spill financial responsibility.
—How States expect to administer evidence of financial responsibility programs consistent with OPA 90.
—What relationships can exist between MMS and States that do and States that do not have their own evidence of financial responsibility programs.
—How MMS can verify that a State program satisfies the requirements of OPA 90.
—What contact and coordination mechanisms MMS can establish with States.
—To what extent MMS may be allowed to defer offshore facility financial responsibility under OPA 90 to a State program.

4. The oil and gas industry has expressed concerns regarding the availability of insurance for those responsible parties that cannot self-insure. Insurers attribute their problem to claimant direct action, duplicative liability under State law, and determinations of covered damages. The MMS is seeking comments regarding:

—Whether and how direct action, language limiting liability, uncertain scope of damage provisions, and lack of preemption provisions in OPA 90 affect the availability of insurance.
—What regulatory approaches are available under OPA 90 that may improve the availability of an insurance market.

5. Section 1016(e) of OPA 90 authorizes MMS, as the agent of the President, to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility. The MMS is seeking comments regarding:

—What defenses should be available to a Guarantor to ensure the availability of affordable bonds, insurance, or other forms of guarantees.
—On what terms and conditions, if any, should bank letters of credit be

acceptable as evidence of financial responsibility.

—On what terms and conditions, if any, should third party guaranties be acceptable as evidence of financial responsibility.

—On what terms and conditions should a lessee/operator be allowed to self-insure for financial responsibility obligations under OPA 90.

6. Self-insurance, as well as insurance, re-insurance, and other indemnity mechanisms have been identified as methods to achieve the $150 million oil spill financial responsibility requirement of OPA 90. The MMS is seeking comments regarding:

—What organizational structures could be used for other indemnity mechanisms.

—What limitations are appropriate for these indemnity mechanisms to ensure that adequate financial responsibility coverage exists for all participating responsible parties.

—To what extent can a single indemnity mechanism be acceptable as evidence for a number of responsible parties or their offshore facilities.

—Should the utilization of a single indemnity mechanism be limited by a maximum number of offshore facilities or a maximum volume of oil handled by the offshore facilities. If not, why not.

—What financial tests or criteria should be used to judge applications for self-insurance.

7. For the purposes of administering section 1016 of OPA 90, the MMS interpretation of the definition for "oil" in section 1001(23) of OPA 90, excludes facilities that handle or produce only dry natural gas. The MMS recognizes that some quantity of natural gas liquids may be produced with the gas. Facilities handling at any one time 1,000 barrels or less of these highly volatile, light end petroleum fractions were exempted from the USCG financial responsibility regulations (33 CFR part 135) because these liquids posed significantly less environmental risk than crude or refined oil. The MMS is seeking comments and the basis for those comments regarding:

—Should offshore facilities that store or process only dry natural gas be exempt from the financial responsibility requirements of OPA 90.

—Should offshore facilities that store or process a de minimis quantity of natural gas condensate be exempt from the financial responsibility requirements of OPA 90.

—What are appropriate de minimis quantities.

8. The oil and gas industry has claimed that the requirement for $150 million in financial responsibility may result in premature abandonment of wells and preclude their transfer to smaller companies. The MMS is seeking comments regarding:

—What information is available to substantiate this claim.

—How regulations can be structured to avoid premature abandonment of producing wells.

Persons choosing to respond to this notice should send comments to the address shown in the addresses section. Following the analysis of comments received, proposed rules governing oil spill financial responsibility for offshore facilities will be developed and published in the Federal Register.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 93–20415 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4699–1]

Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the next public meeting of the Hazardous Waste Manifest Rulemaking Committee. The meeting is open to the public without advance registration.

The purpose of the meetings is to finalize revisions to the uniform national hazardous waste manifest form and rule.

DATES: The Committee meeting will be held on September 7, 1993 from 10 a.m. to 6 p.m., and on September 8, 1993 from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at Resolve-World Wildlife, 1250 Twenty-fourth Street NW., Fifth Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Westlund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–2745. Persons needing further information on procedural or logistical matters should call the Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street NW., suite 500, Washington, DC 20037, (202) 778–9533.

Dated: August 23, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–20712 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[ND4–1–5870; FRL–4698–6]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of North Dakota for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this proposal; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by September 24, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments can be mailed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, Mail Code—8ART-AP, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Copies of the State's submittal and EPA's technical support document are available for inspection during normal business hours at the following location: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol
Phone:

DEPARTMENT OF TRANSPORTATION

U. S. COAST GUARD

STATEMENT OF MR. DANIEL F. SHEEHAN

ON CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR

FACILITIES HANDLING OIL ON THE NAVIGABLE WATERS

OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEES ON COAST GUARD AND NAVIGATION AND

OCEANOGRAPHY, GULF OF MEXICO AND THE

OUTER CONTINENTAL SHELF

COMMITTEE ON MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

OCTOBER 26, 1993

MR. DANIEL F. SHEEHAN
DIRECTOR, NATIONAL POLLUTION FUNDS CENTER
UNITED STATES COAST GUARD
4200 WILSON BLVD., SUITE 1000
ARLINGTON, VA 22203-1804

Mr. Daniel F. Sheehan assumed his duties as Director, National Pollution Funds Center, located in Arlington, Virginia,in June, 1992. He is responsible for managing the billion dollar Oil Spill Liability Trust Fund established by the Oil Pollution Act of 1990. The fund provides money for pollution response and damage compensation. The Funds Center also certificates the financial responsibility of vessels operating in U.S.Waters.

Prior to this assignment, Mr. Sheehan was responsible for international activities, research and development and program oversight for the office of Marine Safety, Security and Environmental Protection. He was the senior technical advisor to the Commandant on these issues.

Over the last 20 years, Mr. Sheehan has represented the United States as a member of delegations to the International Maritime Organization (IMO). He regularly participated in the Maritime Safety Committee, its 10 technical subcommittees, and the IMO Assembly. He has served as an advisor to the U.S. Delegations to the following diplomatic conferences: 1974 Safety of Life at Sea Conference, the 1978 Tanker Safety and Pollution Prevention Conference, the 1984 International Conference on Harmonization, Survey and Certification, the 1988 Conference on the Global Maritime Distress and Safety System and the 1990 Conference on International Cooperation on Oil Spill Preparedness and Response.

Mr. Sheehan is a 1965 graduate of the University of Maryland where he received a B.S. in Fire Protection Engineering. He is a 1988 graduate of the Industrial College of the Armed Forces and George Washington University where he received a Masters in Public Administration. He is a member of Pi Alpha Alpha, the National Honorary Society for Public Administration.

He has received the Secretary of Transportation's Meritorious Service Medal and Bronze Award, the Coast Guard's Superior Achievement Award and the Commander's Award for Civilian Service.

He is married to the former Judith Emanuel. They have two children, Kimberly and Nicole.

DEPARTMENT OF TRANSPORTATION

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OCTOBER 26, 1993

GOOD AFTERNOON, MR. CHAIRMEN. IT IS MY PLEASURE TO BE HERE THIS AFTERNOON TO ADDRESS CERTIFICATES OF FINANCIAL RESPONSIBILITY (COFRS) FOR ALL FACILITIES HANDLING OIL AND OIL PRODUCTS OPERATING IN, ON, AND UNDER NAVIGABLE WATERS OF THE UNITED STATES UNDER THE OIL POLLUTION ACT OF 1990 (OPA 90). THE RESPONSIBILITY FOR IMPLEMENTING THIS PROVISION WITH RESPECT TO OFFSHORE FACILITIES WAS DELEGATED TO THE MINERALS MANAGEMENT SERVICE (MMS) AND THE RESPONSIBILITY WITH RESPECT TO VESSELS WAS DELEGATED TO THE COAST GUARD. MMS RECENTLY PUBLISHED AN ADVANCE NOTICE OF PROPOSED RULEMAKING, AND THIS AFTERNOON I WOULD LIKE TO PROVIDE YOU A BRIEF OVERVIEW OF THE STATUS OF THE COAST GUARD'S VESSEL FINANCIAL RESPONSIBILITY RULEMAKING.

ON SEPTEMBER 16, 1991, THE NOTICE OF PROPOSED RULEMAKING (NPRM) FOR VESSEL COFRS WAS PUBLISHED IN THE FEDERAL REGISTER.

AT A HEARING BEFORE THE COAST GUARD AND NAVIGATION SUBCOMMITTEE OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE IN NOVEMBER 1991, ALMOST ALL INDUSTRY WITNESSES APPEARING AT THAT HEARING GENERALLY OPPOSED THE NPRM AS WELL AS MANY OF OPA 90'S TITLE I FEATURES, INCLUDING POTENTIAL UNLIMITED LIABILITY, DIRECT ACTION, AND NON-PREEMPTION OF STATE LAWS.

THE COMMENT PERIOD ON THE PROPOSED RULE CLOSED ON JANUARY 24, 1992, AND OVER 300 COMMENTS WERE FILED. MOST OF THOSE COMMENTS REITERATED THE THEMES EXPRESSED AT THE NOVEMBER 1991 HEARING.

AS PROMISED IN THE NPRM PREAMBLE, THE COAST GUARD ANNOUNCED THE AVAILABILITY OF A PRELIMINARY REGULATORY IMPACT ANALYSIS (PRIA) IN THE JULY 21, 1993, FEDERAL REGISTER. OVER 500 COPIES WERE DISTRIBUTED WORLDWIDE. NOT EVERYONE AGREED WITH THE ANALYSIS, BUT MOST OF THE MARITIME COMMUNITY PRAISED ITS COMPREHENSIVE BACKGROUND AND STATEMENT OF THE ISSUES. THE PRIA COMMENT PERIOD CLOSED ON SEPTEMBER 20, 1993.

THE PRIA CONSIDERED FOUR OPTIONS: RETAIN THE EXISTING PRE-OPA 90 RULES; ADOPT THE NPRM; ADOPT THE NPRM WITH AN AMENDMENT TO ACCEPT MEMBERSHIP IN A PROTECTION AND INDEMNITY (P&I) CLUB AS AN ASSET FOR SELF-INSURANCE; AND ADOPT THE NPRM WITH AN AMENDMENT TO THE SELF-INSURANCE FORMULAE BY ELIMINATING THE WORKING CAPITAL REQUIREMENT AND/OR THE REQUIREMENT TO MAINTAIN ASSETS IN THE UNITED STATES. THESE OPTIONS WERE ANALYZED IN THE PRIA FOR THEIR POTENTIAL ECONOMIC IMPACTS, AND SUPPORT FOR OPA 90'S PHILOSOPHY THAT THE POLLUTER SHOULD PAY PROMPTLY FOR REMOVAL COSTS AND DAMAGES ASSOCIATED WITH AN OIL SPILL, AND THAT SUCH PAYMENT SHOULD BE ASSURED.

APPROXIMATELY 50 COMMENTS WERE FILED ON THE PRIA. THE COMMENTS CAN BE GROUPED AS FOLLOWS: THOSE THAT SUPPORT THE NPRM; THOSE THAT RECOMMEND P&I CLUB MEMBERSHIP BE CONSIDERED AN ASSET FOR PURPOSES OF SELF-INSURANCE, WITH THE ADDED FEATURE OF MAKING THE OIL SPILL LIABILITY TRUST FUND (OSLTF) A LOSS-PAYEE; AND THOSE THAT RECOMMEND LEGISLATION ESTABLISHING A MANDATORY "EXCESS INSURANCE FACILITY" (EIF) TO SERVE AS THE COFR GUARANTOR AND TO PROVIDE HIGH-LEVEL INSURANCE TO TANKER OWNERS AND OPERATORS.

LET ME BRIEFLY SUMMARIZE THESE COMMENTS:

THE NPRM: TWO NEW DEVELOPMENTS WERE IDENTIFIED IN THE COMMENTS TO THE PRIA-- THE PROPOSED CREATION OF A NEW COMMERCIAL INSURANCE ENTERPRISE THAT WOULD INSURE SHIPOWNERS AND OPERATORS UP TO THE OPA 90 LIMITS, AND ALSO SERVE AS GUARANTOR; AND, SECOND, THE WIDER USE OF SURETY BONDS.

P&I CLUB MEMBERSHIP AS AN ASSET, WITH A LOSS-PAYEE CLAUSE: THE PROPONENTS OF THIS APPROACH POSTULATE THAT P&I CLUB MEMBERSHIP HAS VALUE AND SHOULD BE CONSIDERED AN ASSET IN THE SELF-INSURANCE CRITERIA.

EIF: THE MANDATORY EIF IS DESIGNED TO PROVIDE HIGH LEVELS OF INSURANCE (UP TO 2 BILLION DOLLARS) TO TANKER OWNERS OPERATING IN UNITED STATES WATERS. THIS APPROACH REQUIRES LEGISLATION. SHIPOWNERS WOULD BE REQUIRED TO PURCHASE THIS HIGH-LEVEL INSURANCE TO OPERATE IN UNITED STATES WATERS.

THE INTERNATIONAL GROUP OF P&I CLUBS REITERATED ITS STEADFAST REJECTION OF THE NPRM AND OPPOSITION TO BECOMING GUARANTORS SUBJECT TO DIRECT ACTION. LLOYD'S OF LONDON CLARIFIED ITS ORIGINAL COMMENTS BY EXPLAINING THAT IT OPPOSES THE NPRM,

PRINCIPALLY IN ITS CAPACITY AS A DIRECT INSURER, RATHER THAN AS A REINSURER.

OUR PLANS TO CONCLUDE THIS RULEMAKING ARE TO EVALUATE ALL THE COMMENTS AND ALTERNATIVES, MEASURING EACH AGAINST OPA 90'S "POLLUTER PAYS" PRINCIPLE. WE MAY ALSO CONSIDER WHETHER AN ALTERNATIVE IS PERMITTED BY OPA 90. FINALLY, WE MUST CONSIDER THE ECONOMIC EFFECT OF EACH ALTERNATIVE. THERE IS MUCH DETAIL STILL TO BE EVALUATED, BUT I AM ENCOURAGED BY THE SERIOUS UNDERTAKING BY SEVERAL OF THE COMMENTERS TO DEVELOP NEW ALTERNATIVES.

THE COAST GUARD IS EVALUATING ALL OPTIONS WITH AN OPEN MIND. THE COMMANDANT INTENDS TO PRESENT HIS RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION BY THE END OF THE YEAR. DEPENDING ON THE APPROACH SELECTED BY THE ADMINISTRATION, FOLLOW-ON ACTION COULD RANGE FROM PUBLICATION OF A FINAL OR INTERIM FINAL RULE, TO PUBLICATION OF A SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING, TO PREPARATION OF A LEGISLATIVE PROPOSAL. A FINAL REGULATORY IMPACT ANALYSIS WILL ACCOMPANY A FINAL RULE.

AS WE ARE AT A SENSITIVE STAGE OF OUR ADMINISTRATIVE PROCEEDINGS, I AM NOT AT LIBERTY TO DISCUSS OUR DELIBERATIONS ON THE SPECIFIC PROPOSALS. WITHIN THIS CONSTRAINT, I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS THAT YOU MAY HAVE.

Testimony of
Tom Fry
Director, Minerals Management Service
Department of the Interior

Before the
Merchant Marine and Fisheries Committee
Subcommittee on Coast Guard and Navigation
and
Subcommittee on Oceanography, Gulf of Mexico, and OCS

October 26, 1993

INTRODUCTION

I want to thank the Chairman and members of the Subcommittees for the opportunity to present testimony on the activities of the Minerals Management Service (MMS) to implement certain provisions of P.L. 101-380, the Oil Pollution Act of 1990 (OPA 90), specifically section 1016--oil spill financial responsibility requirements for offshore facilities.

With the new directions being forged by the Administration, this is a good time for reflection, reporting on the implementation status, and reviewing the policy and goals of OPA 90. Success in the Oil Spill Financial Responsibility Program will permit the MMS to help achieve a statutory requirement that polluters pay for clean-up and damage expenses if and when an oil spill occurs.

In my testimony today, I would like to provide you with an overview of the present status of the MMS implementation of the oil spill financial responsibility requirements, our outreach efforts, and a description of the opportunities and challenges before us.

IMPLEMENTATION ACTIVITIES

Section 1016(c) of OPA 90 states, in part, that "..each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected under section 1004(a).."

The MMS implementation of the oil spill financial responsibility requirements of OPA 90 began on October 1, 1992. On that date, the U.S. Coast Guard (USCG) Certificate of Financial Responsibility (COFR) Program, with its files and personnel, were transferred to the MMS.

In December 1992, we finished comparing MMS and USCG records on Outer Continental Shelf (OCS) lessees and operators to verify compliance with existing USCG COFR regulations.

On April 16, 1993, with the publication of Notice to Lessees and Operators (NTL) No. 93-1N, MMS formally announced the transfer of the COFR Program from the USCG and described the procedures that would be followed for COFR applications for OCS offshore facilities. As provided by Section 1016(h) of OPA 90, the $35 million evidence of financial responsibility requirement in Title III of the OCS Lands Act was continued in effect. Copies of this NTL were forwarded to seven Coastal State Governors -- Alaska, California, Texas, Louisiana, Mississippi, Alabama, and Florida - with a request for the identification of points of contact for regulatory coordination.

As MMS examined the oil spill financial responsibility regulatory requirements in OPA 90, we realized that the scope of activities and the range of "offshore" jurisdiction were potentially much greater than we had initially thought. The terms "facility", "offshore facility", and "navigable waters", as defined in OPA 90 and prior laws, create this situation.

To clarify the intent of these definitions, we carefully reviewed the OPA 90 Conference report. The Conference report stated that these definitions were re-stated verbatim from section 311(a) and section 502 of the Federal Water Pollution Control Act (FWPCA). The Conference report states that docks, piping, wharves, piers, and similar appurtenances that rest on submerged lands and are directly or indirectly connected to land-based terminals would be part of an onshore facility "to the extent..they are deemed to be part of an onshore facility under the FWPCA." However, discussions with the Environmental Protection Agency and the Department of Transportation, and our own research, have not disclosed any such pre-OPA 90 interpretation of the FWPCA.

OPA 90 defines "navigable waters" as the waters of the United States, including the territorial sea. As we examined both the statutory and judicial evolution of "navigable waters," it became clear to us that the term may include most of the surface waters of the United States and the adjacent wetlands.

A "facility" is defined as any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

The definition of an "offshore facility" is any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

These definitions seem to create a financial responsibility requirement for any activity that can spill oil and is located in, on, or under the territorial sea, most of the surface waters of the United States and the adjacent wetlands. This goes far beyond the offshore oil platforms with which the MMS is familiar. The definition of "OCS facility" in OPA appears to confirm that the term "offshore facility" applies to far more than platforms on the OCS.

I also want to point out that, according to the definition of "responsible party," the oil spill financial responsibility requirements apply to State and municipal governments that operate facilities. This could be significant to States such as Alaska, where many small communities maintain and operate oil fueled electric generating facilities.

Consequently, the MMS elected to gather preliminary comments and information about potential impacts by publishing an Advance Notice of Proposed Rulemaking (ANPR) on August 25, 1993. Comments were initially requested by October 25, 1993; however, as a result of written requests, the comment period has been extended to December 24, 1993.

As of October 22, 1993, over 66 public comments had been received. The common concerns indicated in these comments are the broad scope of the definition of "offshore facility" and the probability that evidence of financial responsibility of $150 million would not be available or could not be afforded the majority of those potentially affected by section 1016. We expect to receive many more comments before the comment period ends and will advise you of the concerns expressed. We will also provide the committee copies of these comments.

MMS OUTREACH EFFORTS

The MMS has initiated an outreach effort, using many different forums, in an attempt to ensure that potentially affected sectors of the economy are fully informed of the oil spill financial responsibility requirements in OPA 90 for offshore facilities. We also want to be sure that we explore with the public the types of facilities and equipment that may be classified as offshore facilities.

At $150 million, we believe that very few companies can self-insure; therefore, insurance, as evidence of oil spill financial responsibility, will probably gain increasing importance when the oil spill financial responsibility requirements of OPA 90 are implemented. On August 30, 1993, representatives of the MMS attended the 1993 Houston Marine Insurance Seminar where we made a presentation on the published ANPR and initiated discussions

with representatives of insurance brokers, insurance underwriters, and re-insurers.

In late August 1993 and early September 1993, meetings were held in Washington, D.C. with representatives of:

- Oil producers' associations
- Pipeline owners' associations
- Refiners' associations
- Barge owners' associations
- Marina owners' associations
- Insurance industry associations
- Banking industry associations
- Environmental community representatives, and
- Representatives of other parties that may be affected by the oil spill financial responsibility requirements of OPA 90.

On September 28, 1993, meetings were held in Juneau, Alaska with Alaska State representatives; and on September 28-29, 1993 with representatives of pipeline operators, drilling service companies, refiners, marina operators, bush pilots, native corporations, and others. The attendees at these meetings agreed to participate in additional public meetings in Alaska, should the meetings be requested.

On November 2 and 4, 1993, public meetings are scheduled for New Orleans, Louisiana and Houston, Texas, respectively, to discuss the issues addressed in the ANPR. Another public meeting is planned for the San Francisco Bay area on November 30, 1993. Other public meetings are being considered for Alaska, the Central United States, and the Atlantic coastal States.

We have also held informal discussions with various members of Congress and their staff as part of our outreach efforts and will continue to do so as our rulemaking process progresses. To date, these discussions have been useful in our efforts to understand OPA 90 requirements.

The efforts listed above are ambitious. We are very interested in knowing the potential effect of any new regulations and need to obtain information from the regulated community so that we can evaluate the rule's economic impact. It is imperative that potentially affected parties have an opportunity to make their

concerns known before we write the new oil spill financial responsibility regulations for offshore facilities. In general, many of the people we have met with have told us that, although they disagree with the OPA 90 requirement on financial responsibility, they appreciate being consulted.

CONCLUSION

So far, the message that MMS is hearing through its various outreach efforts is that the oil spill financial responsibility requirements for offshore facilities in OPA 90 could adversely affect many segments of the United States economy and would result in unenforceable regulations. The MMS would like to be able to develop approaches to implement OPA 90 in a reasonable and balanced way that preserves the purpose of financial responsibility without creating economic hardships. We are trying to determine what, if any, flexibility is available within the confines of the statute.

So far, however, we have been unable to locate evidence of clear Congressional intent contrary to the literal language of section 1016. In writing regulations, the clear language of the statute leaves us with very little discretion.

MMS intends to draft regulations that are consistent with the law and expressed Congressional intent. We are concerned that unless we follow the law as literally stated in OPA 90, our regulations may fail on one or more key issues if challenged in the courts.

We look forward to working further with you on this important issue, welcome your insights into the issues raised through the ANPR, and will keep you apprised of our progress. Further, should it appear that new statutory provisions are needed to permit us to accomplish the many ambitious goals of the Congress and the Administration, we hope we can work together on fashioning the best approach.

This concludes my prepared remarks. However, I will be pleased to answer any questions the Subcommittees may have.

REVISED
TESTIMONY BEFORE THE SUBCOMMITTEE ON COAST GUARD NAVIGATION AND SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF, COMMITTEE ON MERCHANT MARINE AND FISHERIES

BY

TIMOTHY M. HEBERT
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OCTOBER 26, 1993

Good afternoon Mr. Chairman and distinguished subcommittee members. The State of Louisiana appreciates the opportunity to present to you our recommendations and concerns regarding Certificates of Financial Responsibility (COFRs) for all facilities handling oil and oil products operating on the Outer Continental Shelf, as provided for in the Oil Pollution Act of 1990 (OPA '90).

INTRODUCTION

A lot of people associate offshore production with oil spills -- they specifically cite the 1989 spill in Prince William Sound, near Valdez, Alaska. However, the important point to remember about the Valdez incident is that it was caused by oil spilled from a tanker -- it was not caused by offshore production or production on or near a waterbody. And while virtually all imported oil must be brought into this country by tanker, 95% of offshore oil, and most oil and gas produced on or near a waterbody, is brought ashore by pipeline.

Tankers and imported oil are where the environmental concerns should primarily lie. Tankers are responsible for about 45% of the oil discharged into the world's oceans, while world wide drilling operations are the source of only 1.5% of oil discharges. The contribution to global marine oil pollution from U.S. offshore production is less than one-tenth of one percent.

In the Gulf of Mexico, particularly in Louisiana state waters, the spill record from production facilities is equally superior. The risk of a spill caused by offshore production is continually being reduced by the invention of innovative spill prevention devices and the onslaught of spill prevention regulations promulgated in recent years. Just recently, a major oil company operating in Louisiana waters advised the MMS that its worst case discharge from an offshore production facility was 23,000 barrels of oil. Compared to the Jahre Viking, a tanker capable of carrying 4.5 million barrels of oil and which calls in the Gulf of Mexico, both the threat of a production related spill and the potential damages associated therewith are relatively minimal.

MMS' Preliminary Interpretation of the Extent of the Geographic Jurisdiction to which the ANPRM applies is exceedingly broad and is inconsistent with the legislative intent of OPA '90.

OPA '90 Section 1016(c) provides, in pertinent part, as follows: "... each responsible party with respect to an offshore facility shall establish and maintain evidence responsibility of $150,000,000 ..."

The proposed regulations would be surprisingly broad in that they would apply to far more facilities than what is commonly considered "offshore" or OCS facilities. MMS has initially interpreted OPA '90 as requiring proof of financial responsibility for all offshore facilities in, on, or under U.S. navigable waters. As the Federal Register notice states, OPA '90:

> defines U.S. navigable waters as the waters of the U.S. including the territorial sea. This includes all of the states of the U.S., the District of Columbia, the Commonwealth of Puerto Rico Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas and any other territory or possession of the U.S.

This broad definition of "offshore facility" would seem to make every marina and fuel dock in the country, every pipeline that crosses inland navigable waters, and facilities and pipelines located in wetlands subject to these financial requirements. As an example of this broad-reaching scope of "offshore facilities" the notice offers that:

> "a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the $150 million financial responsibility provisions of these rules as would the operator of an oil well in the Great Lakes."

Clearly, there is absolutely no manifestation of legislative intent whatsoever in OPA '90 that Congress intended to burden these type of "inland/onshore" operations with $150 million of financial responsibility. In fact, the consistent understanding of all congressional committees engaged in OPA's development was that requirements applicable to offshore facilities were limited to the context of oil production operations on the Outer Continental Shelf. Anyone involved in OPA's development understood that it represented a consolidation of four separate federal oil spill titles -- The Clean Water Act, The Trans-Alaska Pipeline Authorization Act, The Deepwater Port Act, and, relevant here, The Outer Continental Shelf Land Act (OCSLA), which is the historic genesis for the liability and insurance requirements for offshore facilities in OPA. Thus, in enacting OPA, Congress repealed title III of OCSLA, and replaced those requirements for liability and insurance for "offshore facilities" with those in OPA for "offshore facilities". There is no evidence of any congressional intent to extend these historic OCSLA requirements to onshore facilities.

Without delving into a detailed, intricate legal analysis, the State of Louisiana respectfully asserts that MMS' expansive, initial legal interpretation of OPA Section 1016(c) is erroneous. First, this interpretation places an inordinate emphasis on the generic statutory definitions for "offshore facility", "facility" and "navigable waters" while ignoring the specific and controlling definition of a "responsible party for an offshore facility" (OPA Section 1001(32)(C)) which is obviously narrowed to the context of facilities engaged in OCS oil leasing activity, referring as it does, to only three potential types of entities: "lessee", "permittee", or "the holder of a right of use and easement granted under applicable state law or the Outer Continent Lands Act." Additionally, MMS' interpretation incorrectly ignores OPA's distinction between an

"onshore facility" and an "offshore facility." However, OPA's legislative history contains the following clarifying statement concerning "onshore facilities":

> "To the extent that docks, piping, wharves, piers, and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land based terminal are deemed to the part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility under the Conference Substitute, (emphasis added). H. Conf. Rep. No. 653, 101st Cong., 2nd Sess., 102 (1990)."

Thus, MMS incorrectly includes "onshore facilities" such as pipelines crossing inland rivers, storage tanks, marinas, and the like within the purview of "offshore facilities." Moreover, the Report of the Senate Committee on the Environment and Public Works, at page 16, states, in pertinent part, as follows: "There is no requirement for showing evidence of financial responsibility for onshore facilities."[1]

While the foregoing analysis is not intended to be definitive nor exhaustive, it is at least an indication that something is awry in the initial interpretation given to OPA Section 1016(c) by the MMS. At a minimum, the State of Louisiana respectfully urges the MMS to confine the application of its financial responsibility requirements to those "offshore facilities" which are engaged in the exploration and production of oil on the Outer Continental Shelf (OCS), at the previous $35 million financial responsibility level.

Finally, needlessly expanding Section 1016(c) to include all facilities, whether onshore or offshore, does absolutely nothing to enhance environmental protection or help prevent an oil spill from occurring.

The need for increasing the amount of COFRs for offshore facilities as well as the necessity of COFRs for offshore facilities needs to be re-analyzed. Factors which need to be taken into account include: spill risk, micro-economics of oil production and the existence of various industry oil spill contingency funds.

The establishment of a virtually limitless source of non-federal response funds, the Oil Spill Liability Trust Fund, completely addresses the concerns raised in this section concerning facilities. The Natural Gas and Oil industry is paying for this fund from dedicated fees and the federal fund has approximately a billion dollars in cash on hand.

The top 15 facility spills in history combined (even in '92 dollars) total only a mere fraction of response costs and damages in the Valdez spill. As you can see, the federal trust fund more than meets the needs for facility related incidents and will be replenished whenever needed. Most of these top 15 facility spills also occurred before the current operating equipment and procedures were in place. Further, operations today pose a declining risk of accidents.

Assuming that MMS' interpretation of OPA Section 1016(c) is upheld and a Final Rule is promulgated, the U.S., the State of Louisiana and its oil and gas industry will be financially and economically devastated.

Louisiana is the second most important energy producing state in this country. We have been in the natural gas and oil business for over one hundred years. In 1981, the State of Louisiana's oil and gas royalty and severance tax revenues amounted to $1.1 billion dollars. By 1992, that figure had declined to $640 million. Since the "oil bust"

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[1]S. Rep. No. 94, 101st Cong., 1st Sess. 16 (July 28, 1989).

in the mid 1980's, Louisiana has lost over 70,000 of its 130,000 oil and gas related jobs. By comparison, employment in the domestic oil and gas industry has fallen by half, with over 450,000 jobs lost. In 1993, the Louisiana oil and gas industry only employs 60,000 residents. Accordingly, the $150 million financial responsibility must be reduced to a level of assurance that is commensurate with the level of risk associated with the activity.

According to Dr. Robert Baumann at the LSU Center for Energy Studies, the economic impact from the proposed rule would literally shut down the oil and gas industry in Louisiana. There are approximately 2,000 oil and gas operators presently in our state. Assume that an operator is realizing a net operating profit of $3 per barrel and that the preliminary cost estimates for surety bonds (which we doubt can be obtained) to satisfy COFR requirements under Section 1016(c) are as follows:

	Large Major	Mid-size Major Large Independent	Small Independent
Base Cost (A) (per $1000 of coverage per year)	$5	$10	$20-100

Based upon current production rates in Louisiana and the state of the oil and gas industry in Louisiana, if Louisiana operators could obtain a $5 base cost per $1000 of coverage per year for a surety bond to satisfy the $150 million COFR, only 122 operators would be able to afford the coverage.[2] If the available price for that same coverage is $10, then only seventy operators could afford that coverage. Finally, if the available price for that coverage is $20 only thirty-seven operators in Louisiana could afford that coverage! Simply put, the COFR requirements as contemplated by MMS would devastate Louisiana's economy and state government! In particular, Louisiana's twelve coastal parishes which harbor 6700 wells and produce 1.1 billion cubic feet of natural gas and 140 million barrels of oil per year could cease to exist as financially viable political subdivisions and cultural centers. In addition, the Caddo-Pine Island field, a field in north Louisiana which has been in production since 1910, would completely shut down. Since no major oil companies operate in that field, every well in that field would cease operations.

This one, small section of this Act could totally destroy our state and industry as we know it. Extremely significant resources will be abandoned in the ground, much of it permanently lost, if this rule is promulgated. Thousands of jobs will be lost in the industry and untold more with its collapse. And again, all this for a provision that is unrealistic and unimplementable.

The United States, by direct past action in law and regulations, has placed its critically important domestic production needs largely in the hands of independent producers. Our entire economy is based on dependable access to domestic production. This unneeded overkill of financial guarantees will destroy the very segment of the industry we have turned to and in doing so, threatens our national security.

Also, this issue is equally destructive to manufacturers, public and private utility companies, all transportation industries, and just about every parish and county in every

[2]These estimates are based on an assumed profit margin and rate of production per operator.

State in the country. No local governments are exempt. Every train line, trucking company, port authority, and most bridges would be shut down.

The cessation of production is tantamount to a loss in royalties and taxes. Thus, the State of Louisiana will suffer substantial damages from this federal takings in lost royalties and taxes. Is it the intention of the federal government to remedy this? That will be a tall order considering all states and territories will be as severely impacted.

It is no exaggeration to state that the full promulgation of this proposed rule will send this country, and send Louisiana, too, into a depression that will make the thirties look like a mild recession. This Section is so needlessly far reaching that it is impossible to see how it can be regulated and enforced. It is quite apparent that Section 1016(c) does not take into account the fact that all facilities are not identical, either in size, location or capacity to prevent or contain oil spills and minimize the amount of oil that may reach the environment.

The availability of legitimate options for demonstrating financial responsibility is severely restricted.

After an informal survey of numerous oil and gas operators in Louisiana, the reality is that no commercial entity, has come forth to date willing to accept the potential application of direct action under financial responsibility regulations. For example, surety companies strongly object and will not submit to any direct action requirements in these MMS regulations. The banking community vis a vis letters of credit share this concern. A medium sized major company recently received a priced quotation of a $5.4 million per year for a $150 million insurance policy with a $20 million deductible. Additionally, it is estimated that only one third of the 300 largest U.S. publicly traded oil and gas producing companies have adequate financial resources to self-insure. It is quite obvious that the potential ways for demonstrating financial responsibility under Section 1016(c) are not yet commercial realities to the very people required by law to obtain them. This, too, is a frightening thought. It is incumbent upon MMS to utilize whatever administrative flexibility it possesses to seek commercially viable solutions which redress the difficulty, and in some instances - impossibility, of obtaining COFR's under the present regulatory scheme. If such flexibility will not take place or cannot take place, for whatever reason, then the regulatory scheme itself must be changed.

CONCLUSION

The State of Louisiana is also concerned that most other states are unaware that they are all negatively impacted by this provision. The fact that MMS is handling this issue and that hearings are only scheduled in Louisiana, Texas, California and possibly in Alaska and Pennsylvania in 1994, has led most states to believe this is strictly an offshore or oil and gas issue, which it definitely is not.

We respectfully urge these subcommittees to fully inform the appropriate federal agencies of the potential negative impacts of this ANPRM and solicit their comments as well.

Now is not the time to point fingers or attempt to lay blame as to why we are in this dilemma. Nor is it the time for parties to begin strategizing how to take back his or her pound of flesh lost somewhere in the OPA '90 process, if and when, OPA '90 is revisited to resolve the problems encountered with the implementation of Section 1016(c). On the contrary, now is the time for all concerned to come together for the common good of ensuring our nation's economic stability and protecting the environment through cooperative dialogue with sound judgment and realistic facts dominating the process. This was made clear in the OPA conference report on Section 1016 which urged

regulators to issue policy defenses necessary. "...to foster a continued market for providers of financial responsibility". This evidences Congress' intent that the financial responsibility regulations be consistent with commercial realities.

The State of Louisiana welcomes this opportunity to provide testimony before these subcommittees. We are eager to work with the MMS and the subcommittees' staff to develop specific administrative and legislative solutions to the problems outlined above and those which we may encounter in the future. I will be pleased to answer any questions.

Testimony of
TEXAS LAND COMMISSIONER GARRY MAURO
to the
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
and the
SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO
AND THE OUTER CONTINENTAL SHELF
October 26, 1993

Mr. Chairman. Members.

Thank you for the opportunity to address the Committees today on a topic that is vital to the economic well being of the State of Texas.

As the Commissioner of the Texas General Land Office, I am the constitutionally designated trustee for 20.5 million acres of publicly owned state land in Texas.

Approximately 4 million acres of this land is submerged, which includes our coastal bays, estuaries and Gulf Of Mexico waters out to 10.3 miles.

The revenue from the leasing of public lands to oil and gas exploration and production companies is deposited into the Permanent School Fund which helps fund public education in Texas.

For fiscal year 1992, $45.5 million from submerged lands oil and gas royalties, rents and bonuses was deposited into the PSF.

In addition, the General Land Office is the lead state agency for the prevention and response to oil spills in the marine environment.

The proposed financial responsibility requirements contained in the MMS ANPR threaten a major source of funding for the schoolchildren of Texas.

They also threaten the 839 operating wells in Texas state waters, the owners and operators of these wells, the subsidiary service industry and the employees and families of all of these associated entities.

Mister Chairman, without sounding alarmist, these are the facts:

There are presently 145 operators of oil and gas wells in Texas bays and Gulf of Mexico waters. These 145 operators have a total of 839 wells.

The average production per well is just over 50 barrels per day. That's right, only 50 barrels per day.

28 percent of the operators have average daily production per day below 15 barrels. 77 percent of the operators have ten or fewer wells in state waters.

In fact, in Texas waters there are only two wells that produce more than 200 barrels per day. These wells are located in mature fields, where the geology is well known. There is not a great risk of blowout in these waters.

Virtually all of this production is mechanically lifted to the surface, and therefore the subsurface pressures do not present significant risks of blowout.

Mister Chairman, not only are our production rates and risks low, those companies that are producing in Texas waters cannot obtain financial responsibility coverage in the amounts proposed by the MMS notice.

Only 11 percent are operated by major oil companies. The rest of the wells in Texas bays and offshore waters are operated by independents.

These independents cannot afford to establish $150 million in financial responsibility. In fact, only a handful of these companies have a net worth approaching $150 million.

My staff has spoken to a number of independent oil and gas operators in Texas in the past few weeks. Here's what they've heard:

Mr. B. W. Beckham of North Central Oil says, "The $150 million of liability coverage would eliminate most of our potential partners, and ultimately force us to operate in other areas. We operate several producing wells in state waters that we would be forced to plug and abandon."

Mr. Bill Bethea of W & T Offshore says, "The risk of catastrophic spill is minimal for most operators. Because of the low risk, liability coverage has been available up to the current $35 million requirement. However, there have been indications that Lloyds may not be willing to take the risk of providing $150 million in coverage and there are no other insurers who appear ready to fill that niche."

Mr. David Pilgrim of Lamar Oil & Gas says, "The bonding companies want five percent of the bond per year. That would be $7.5 million. The majority of companies don't make that much money a year."

Mister Chairman, I hope I have adequately portrayed the impact such a requirement will have on an industry which is suffering from declining domestic production and increasing foreign oil exploration.

I would like to propose three steps which the government can take that will provide a reasonable and rational basis for protecting the environment from oil spills_without devastating our domestic independent oil and gas producers.

First, these offshore facilities_unlike tankers, on-shore facilities and deepwater ports_are faced with a single requirement for financial responsibility.

The $150 million is not based on the risk these facilities represent. There is no consideration given to traditional elements of risk analysis. OPA specifically recognizes these facts in setting liability limits for on shore facilities. These same elements should be considered for offshore facilities. They are:

o size (production rate) of the facility;
o storage capacity;
o oil throughput;
o proximity to sensitive areas;
o type of oil handled;
o history of discharges;
o and other relevant risk factors.

MMS is going to conduct a series of regional meetings where they will hear first hand from the affected industry. MMS is authorized under OPA to report to the Congress on adjusting liability limits.

We recommend that they do so and that they do it based on the real risks these facilities pose to the environment.

Second, as an alternative to proving financial responsibility, allow independents to join a pool that provides the required coverage at premiums based on risk.

This is the way that vessel owners are covered for OPA and a similar mechanism should be available to offshore facilities, which, in Texas, pose less of a risk than tank vessels.

And third, the government should consider utilizing the Oil Spill Liability Trust Fund created under OPA to assist these independent operators in meeting OPA's financial responsibility requirements.

Again, thank you for the opportunity to address the committees today. I'd be happy to answer any questions you might have.

TESTIMONY
OF
JOHN T. SHIVELY
SENIOR VICE PRESIDENT
NANA DEVELOPMENT CORPORATION
BEFORE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE
ON MERCHANT MARINE & FISHERIES
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
AND
SUBCOMMITTEE ON OCEANOGRAPHY GULF OF MEXICO
AND THE OUTER CONTINENTAL SHELF
OCTOBER 26, 1993
WASHINGTON, D.C.

INTRODUCTION

MY NAME IS JOHN SHIVELY, AND I AM THE SENIOR VICE PRESIDENT OF NANA DEVELOPMENT CORPORATION (NANA), A WHOLLY OWNED SUBSIDIARY OF NANA REGIONAL CORPORATION, ONE OF THE THIRTEEN REGIONAL CORPORATIONS FORMED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (PL 92-203). NANA APPRECIATES BEING GIVEN THE OPPORTUNITY TO TESTIFY ON THE ISSUE OF CERTIFICATES OF FINANCIAL RESPONSIBILITIES (COFRs) REQUIRED BY THE OIL POLLUTION ACT OF 1990 (OPA '90) FOR ALL FACILITIES HANDLING OIL AND OIL PRODUCTS OPERATING IN, ON, AND UNDER NAVIGABLE WATERS OF THE UNITED STATES.

PROBLEM

SEVERAL WEEKS AGO NANA WAS NOTIFIED BY THE MINERALS MANAGEMENT SERVICE OF THEIR PROPOSED RULE MAKING ON CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR OIL FACILITIES ON, IN, OR UNDER NAVIGABLE WATERS. THE MINERALS MANAGEMENT SERVICE ALSO INDICATED TO US THAT THE OPA '90 REQUIRES $150 MILLION IN ORDER TO OBTAIN A CERTIFICATE OF FINANCIAL RESPONSIBILITY. ALTHOUGH WE OPERATE FOUR FUEL DISTRIBUTING FACILITIES, THESE FACILITIES ARE LOCATED ON LAND, AND THEREFORE WE ASSUMED THE PROPOSED REGULATIONS HAD NOTHING TO DO WITH US.

HOWEVER, THE MINERALS MANAGEMENT SERVICE PROPOSED REGULATIONS DEFINE NAVIGABLE WATERS TO INCLUDE WETLANDS. AS I KNOW THE COMMITTEE IS AWARE, MOST ALASKA NATIVE COMMUNITIES ARE SITUATED ON WETLANDS. THE FOUR FACILITIES WE OPERATE ARE LOCATED ON LAND WE BELIEVE WOULD BE CONSIDERED WETLANDS. THREE OF THESE FACILITIES ARE LOCATED IN REMOTE ALASKA VILLAGES, NONE OF WHICH IS CONNECTED TO ANY OTHER COMMUNITY BY A ROAD. THE FOURTH FACILITY IS LOCATED AT DEADHORSE, ALASKA ADJACENT TO THE PRUDHOE BAY OILFIELD. OUR CAPACITY AT THESE FUEL DISTRIBUTORSHIPS RANGES FROM 120,000 TO 240,000 GALLONS. THE PRODUCTS WE SELL ARE GENERALLY DIESEL FUEL AND GASOLINE. OUR ANNUAL REVENUES FROM THE THREE SMALL VILLAGE PROJECTS RANGE FROM $175,000 TO $325,000. THE REVENUES FROM THE DEADHORSE OPERATION ARE ABOUT $4 MILLION A YEAR.

NANA IS NOT CAPABLE OF MEETING THE REQUIREMENTS OF OBTAINING A CERTIFICATE OF FINANCIAL RESPONSIBILITY UNDER THE REGULATIONS PROPOSED BY THE MINERALS MANAGEMENT SERVICE. OUR COMPANY IS NOT BIG ENOUGH TO SHOW $150 MILLION WORTH OF ASSETS THAT MIGHT BE AVAILABLE TO THE GOVERNMENT. WE HAVE INVESTIGATED USING INSURANCE TO MEET THE REQUIREMENTS OF THESE PROPOSED REGULATIONS AND FIND THAT THE COSTS ARE PROHIBITIVE, ASSUMING COVERAGE WOULD BE AVAILABLE. PRESENTLY, OUR INSURANCE AGENTS ARE NOT CERTAIN THEY CAN OBTAIN COVERAGE FOR US.

IF INSURANCE WERE AVAILABLE WE ESTIMATE THAT THE COST WOULD BE BETWEEN $800,000 AND $2,000,000 PER FACILITY. IT WOULD MAKE NO SENSE TO PURCHASE INSURANCE WHICH WAS A MULTIPLE OF OUR ANNUAL REVENUES.

IN ADDITION, THERE IS ANOTHER QUESTION RELATING TO INSURANCE WHICH MAKES THIS SITUATION EVEN MORE DIFFICULT. WE UNDERSTAND THAT THE OPA '90 REQUIRES "DIRECT ACCESS" BY THE GOVERNMENT TO THE INSURANCE COMPANY. THIS MEANS THAT RATHER THAN GOING THROUGH THE INSURED, THE GOVERNMENT GOES DIRECTLY TO THE INSURANCE COMPANY FOR THEIR MONEY. ALTHOUGH THERE MAY HAVE BEEN SOME PUBLIC POLICY REASONS FOR INCLUDING THIS PROVISION IN THE OIL POLLUTION ACT OF 1990, IT IS OUR UNDERSTANDING THAT THE MARKET PLACE DOES NOT OFFER THE PRODUCT WHICH CONGRESS REQUIRES. THIS CATCH 22 SITUATION AFFECTS ANYONE WHO IS ATTEMPTING TO MEET FINANCIAL CERTIFICATION REQUIREMENTS BY USING INSURANCE UNDER ANY OF THE VARIOUS PROVISIONS OF OPA '90.

I HAVE DESCRIBED TO YOU THE PROBLEM AS IT EXISTS FOR NANA. THIS PROBLEM IS MOST LIKELY MULTIPLIED HUNDREDS OF TIMES THROUGHOUT RURAL ALASKA. THERE ARE OVER 200 SMALL RURAL VILLAGES THROUGHOUT THE STATE. MOST OF THESE VILLAGES ARE LOCATED ON WETLANDS. MOST OF THESE VILLAGES RECEIVE THEIR FUEL SUPPLY ONCE A YEAR BECAUSE THEY ARE NOT LOCATED ON ANY ROAD SYSTEM. A VILLAGE MAY HAVE ANYWHERE FROM ONE TO TEN FUEL DISTRIBUTION FACILITIES. A RECENT STUDY BY THE STATE OF ALASKA IDENTIFIED AN AVERAGE OF SEVEN FACILITIES IN THE 44 VILLAGES THEY SURVEYED. GENERALLY THERE IS A COMMERCIAL FUEL DISTRIBUTION FACILITY, A FUEL STORAGE FACILITY FOR THE ELECTRICAL UTILITY, AND A FUEL STORAGE FACILITY FOR THE SCHOOL. EACH OF THESE FACILITIES COULD BE REQUIRED TO OBTAIN ITS OWN CERTIFICATE OF FINANCIAL RESPONSIBILITY FOR $150 MILLION, BECAUSE THE OPA '90 DEFINES "OFFSHORE FACILITY" AS "ANY FACILITY OF ANY KIND IN, ON, OR UNDER ANY OF THE NAVIGABLE WATERS".

SOLUTIONS

IT SEEMS TO ME THAT THERE ARE THREE POSSIBLE COURSES OF ACTION TO SOLVE THE PROBLEM I HAVE OUTLINED ABOVE. THE FIRST, AND MOST SENSIBLE, WOULD SEEM TO BE TO HAVE THE MINERALS MANAGEMENT SERVICE UNDERSTAND THAT WETLANDS SHOULD NOT BE INCLUDED IN THE DEFINITION OF NAVIGABLE WATERS. MY READING OF THE LEGISLATION LEADS ME TO BELIEVE THAT THE MINERALS MANAGEMENT SERVICE HAS SOME FLEXIBILITY IN THIS AREA. HOWEVER, OTHER BELIEVE THAT THE CONGRESS INTENDED THE DEFINITION OF NAVIGABLE WATERS TO INCLUDE WETLANDS.

IF IT WAS THE INTENT OF CONGRESS TO INCLUDE WETLANDS IN THE DEFINITION OF NAVIGABLE WATERS, THEN WE ARE LEFT WITH TWO POSSIBLE COURSES OF ACTION. THE FIRST IS TO AMEND OPA '90 TO PROVIDE SOME REASONABLE EXEMPTION FOR CERTAIN SIZES OF OIL FACILITIES FROM THE REQUIREMENTS OF NEEDING $150 MILLION OF "FINANCIAL RESPONSIBILITY". WE AT NANA WOULD BE GLAD TO WORK WITH THE COMMITTEE TO DEVELOP APPROPRIATE LEGISLATIVE LANGUAGE TO RESOLVE THIS ISSUE. ANOTHER POSSIBILITY WOULD BE TO AMEND OPA '90 TO ELIMINATE WETLANDS FROM THE DEFINITION OF NAVIGABLE WATERS.

IF THE DEFINITION OF NAVIGABLE WATERS CANNOT BE CHANGED ADMINISTRATIVELY OR LEGISLATIVELY, AND IF SMALL FACILITIES ARE NOT EXEMPTED FROM OPA '90, THEN THE ONLY POSSIBILITY LEFT IS TO SHUT DOWN FUEL DISTRIBUTION IN RURAL ALASKA. THIS WOULD MEAN THAT PEOPLE WOULD HAVE NO FUEL TO HEAT THEIR HOMES, NO FUEL TO RUN THEIR ELECTRICAL UTILITIES, NO FUEL TO PROVIDE LIGHT AND HEAT TO THEIR SCHOOLS, AND NO FUEL TO OPERATE THEIR BOATS AND SNOW MACHINES. WE WOULD HOPE THAT THIS OPTION IS AS UNACCEPTABLE TO CONGRESS AS IT IS TO THE PEOPLE OF RURAL ALASKA. WE WOULD BE PLEASED TO WORK WITH THE MINERALS MANAGEMENT SERVICE AND/OR THE CONGRESS TO DEVELOP A COMMON SENSE SOLUTION TO THIS SITUATION.

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO TESTIFY.

JS/sb/2013

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Statement of

Mr. Damian E. Buckley
Vice President
WESTREC Marinas
The Gangplank Marina
Washington, D.C.

on behalf of

The Marina Operators Association of America
150 E. Huron, Suite 802
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before the

Subcommittee on Coast Guard and Navigation
and
Subcommittee on Oceanography, Gulf of Mexico, and
the Outer Continental Shelf
of the
Committee on Merchant Marine and Fisheries

U.S. House of Representatives
Washington, D.C.

Re: Minerals Management Service's Advanced Notice of Proposed Rulemaking on Certificates of Financial Responsibility

October 26, 1993

Statement of Damian E. Buckley
Vice President, WESTREC Marinas
on behalf of the
Marina Operators Association of America
before the Subcommittee on Coast Guard and Navigation
and the Subcommittee on Oceanography,
Gulf of Mexico, and the Outer Continental Shelf
on the Minerals Management Service's Advanced Notice
of Proposed Rulemaking on Certificates
of Financial Responsibility

Thank you Mr. Chairman and good afternoon.

I am Damian Buckley, Vice President of WESTREC Marinas and am responsible for international operations. WESTREC is the nation's largest marina investment firm with over 45 facilities. My office is at the Gangplank Marina here in Washington.

I am testifying on behalf of the Marina Operators Association of America. WESTREC is on the Board of Directors of MOAA. MOAA is the national trade association of small businesses which provide marina services and waterway access to our nation's boaters. Our members include large multi-marina owned companies, like WESTREC, concessionaires on Army Corps of Engineers lakes, marinas managed on behalf of the Department of the Interior National Park Service, small individually or family owned marinas, dry stack storage facilities, service yards, and support services, such as manufacturers of boat docks and access ramps. However, the far majority of our members are the small, family owned marinas with fewer than 100 boat slips.

Boating in America is big business, but it is primarily made up of small businesses. In fact, 47 per cent of all marinas have fewer than 50 slips and 71 per cent have fewer than 100 boat slips. Less than 6.3 per cent of the facilities in our country have 300 or more slips. Only 29 per cent of all marinas have more than 100 boat slips. It is estimated that the U.S. has slightly over 10,000 boat berthing facilities with 10 of more boats (found in marinas, boat yards, yacht clubs, dockominiums, public poarks, and military bases). As you can see, the typical marina operator in our industry is truly a small business.

We greatly appreciate the opportunity to testify this afternoon on the Minerals Management Services Advanced Notice of Proposed Rulemaking on Certificates of Financial Responsibility that was published in the Federal Register on August 25 and again on October 6, 1993.

We also commend your leadership and the interest of both the Subcommittee on Coast Guard and Navigation and the Subcommittee on Oceanography, Gulf of Mexico, and the Outer Continental Shelf for holding this very important hearing today.

As you know, the Oil Pollution Act of 1990 (OPA-90) requires that parties responsible for offshore oil and gas facilities be able to meet certain financial responsibility requirements. The statute mandates that offshore facilities must show financial responsibility of $150,000,000 to ensure payment of damages

resulting from oil spills.

The Minerals Management Service has taken a "broad" interpretation of facility in OPA-90 to include all structures, equipment, or devices, other than vessels and deep water ports, used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. The financial responsibility requirements for offshore facilities under OPA-90 apply to all facilities in, on, or under the U.S. navigable waters.

Therefore, the Minerals Management Service has indicated that recreational boat marinas may be responsible to demonstrate financial responsibility of $150,000,000 under OPA-90.

MOAA strongly believes the financial burden imposed by the proposed rule will cause most, if not all, marinas to close their fuel docks. Small marina operators simply cannot absorb this added cost; and, we believe, the market will not bear the increase in gas and diesel fuel prices needed to "pass on" the cost of this financial burden to the consumer.

Many, but not all marinas, have fuel docks. But because of the small size of most operations, the typical fuel dock pumps less than 100,000 gallons of fuel per year. You can understand this if you look at Coast Guard statistics. 99 per cent of all recreational boats are less than 40 feet. A typical gas and diesel

tank will be placed on shore and will contain between 3,000 and 5,000 gallons. Some of the larger marinas with fuel docks have capacity of up to only 10,000 to 15,000 gallons. And we believe, we do not pose a great threat to the environment because of the small size of our operations and our fuels are light weight fuels that evaporate quickly.

Because our members do not have financial resources nearly large enough to cover $150,000,000 in liability, it is likely marina owners will rely on insurance to show responsibility. My insurance agent stated that the cost of $150,000,000 in financial responsibility insurance will cost about $150,000 per year.

The problem of affording this level of coverage is seriously compounded by another provision in OPA-90 that says all guarantors of financial responsibility must agree to be sued directly. In common terms, that means an insurance provider to a marina could be sued for the entire amount of the liability. This is not a typical requirement of an insurance contract.

Our members have been encountering difficulty in complying with the provisions of the Leaking Underground Storage Act (LUST) which requires $1,000,000 in financial liability insurance, because many insurance companies will not write coverage. Marinas have joined together in co-op arrangements to ensure compliance.

But, even if our members can get insurance coverage, the cost

to the general public will be so exorbitant that many marinas will decide to close their fuel docks. We estimate the price of gasoline and diesel fuel will increase by as much as $2.00 per gallon at smaller marinas just to cover the added cost of financial liability insurance to the marina.

Americans who enjoy recreating on the water will be forced to hand carry fuel in jerry cans to their boats, increasing the chance of spillage, fire, and explosion. Anglers will carry several gas tanks rather than one with the intent of filling up on the return trip. Others will install permanent larger fuel tanks or carry extra tanks creating a boating "molitov cocktail."

Did Congress intend for this to happen? The proposed rulemaking is very frightening to us. To what extent will the Minerals Management Service carry the application of OPA-90 to facilities operating in, on, or under the U.S. navigable waters? Will a commercial tower be required to show financial responsibility of $150,000,000 when he transports a five gallon can of gas to a boater who ran out of gas on the Chesapeake Bay or Galveston Bay?

To the best of our knowledge, recreational boating marinas have never been classified as an "offshore" facility before. Not in the Clean water Acts and not in LUST. Marinas have always been classified as "onshore" facilities.

We are now surprised to be included with the giants of American commerce. If this issue wasn't so threatening to our businesses and to our form of recreation, it would be funny.

We believe the definitions in the Oil Pollution Act of 1990 are entirely ambiguous relating to the issue of whether a marina is classified as an onshore rather than an offshore facility. A plain reading of the words would appear to indicate, at least to us, that a marina is an onshore facility.

The Executive Order asserting regulatory jurisdiction for the implementation of OPA-90 (Executive Order 12777, October 22, 1991) assigns jurisdiction to the Department of Transportation for transportation-related onshore facilities. And a 1971 memorandum of understanding between the Department of Transportation and the Environmental Protection Agency refers to "on shore facilities (such as marinas)."

In our history, our members have never had to deal with the Minerals Management Service. We have never heard of them before this issue. We have always been classified as "onshore" facilities and therefore, have worked with the U.S. Coast Guard and the E.P.A. Mr. Chairman, our members want to know if Congress had this intent when OPA-90 was written.

A recent Executive Order (Executive Order 12866 of September 30, 1993) states that government agencies should seek to avoid

duplicative regulations with other agencies. "Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or other Federal agencies." The Minerals Management Service has, as its mandate, the responsibility to regulate government oil leases on the outer continental shelf. We are questioning their jurisdiction over small marinas pumping retail fuels to recreational boaters in Minnesota or Missouri.

The state of Washington also faced this problem of financial responsibility several years ago. It was addressed, at that time, by language in State Administrative Code and Statute exempting "marine outlets that do not dispense more than three thousand gallons of fuel to a ship that is not a tank vessel, cargo vessel, or passenger vessel, in a single transaction." Lawmakers in Washington also included language in State Statute under the definition of "offshore" facility which reads "Offshore facility does not include a marine facility."

The Oil Pollution Act of 1990 was a major piece of legislation passed by Congress after years of work because of the public reaction to the Exxon Valdez accident. We do not disagree with the intent of OPA-90, but we ask that you consider the effect the proposed rulemaking being examined at this hearing will have on small family owned business. Holding marina operators liable at the same level as major corporations will destroy a significant part of American recreation.

We have proposed several solutions for consideration including a reclassification of marinas to onshore facilities from offshore and the establishment of a threshold similar to the approach taken by the state of Washington.

We look forward to working with you and your staff on this issue. Thank you.

Federal Register / Vol. 56, No. 204 / Tuesday, October 22, 1991 / Presidential Documents 54757

EXECUTIVE ORDER

12777

IMPLEMENTATION OF SECTION 311
OF THE FEDERAL WATER POLLUTION CONTROL ACT
OF OCTOBER 18, 1972, AS AMENDED,
AND THE OIL POLLUTION ACT OF 1990

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, ("FWPCA") (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101-380) ("OPA"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. National Contingency Plan, Area Committees, and Area Contingency Plans. (a) Section 1 of Executive Order No. 12580 of January 23, 1987, is amended to read as follows:

"Section 1. National Contingency Plan. (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

"(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

"(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

"(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

"(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

"(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) ("SARA") is delegated to the Administrator.

"(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2)

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of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;

(2) Secretary of the Interior;

(3) Secretary of Agriculture;

(4) Secretary of Commerce;

(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

"(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

"(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB") "

(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA, respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency ("Administrator") for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).

Sec. 2. National Response System. (a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and hazardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports Act of 1974 ("DPA"), are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA, respecting the inspection of

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Presidential Documents

Title 3—

The President

Executive Order 12866 of September 30, 1993

Regulatory Planning and Review

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statement of Regulatory Philosophy and Principles.* (a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation

is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

STATEMENT OF PATRICK F. TAYLOR
Chairman & CEO, Taylor Energy Company
New Orleans, Louisiana

Before

Subcommittee of Oceanography, Gulf of Mexico and the
Outer Continental Shelf
Subcommittee on Coast Guard and Navigation
Committee on Merchant Marine & Fisheries
House of Representatives

October 26, 1993

Mr. Chairman:

I am Pat Taylor, Chairman & CEO of Taylor Energy Company of New Orleans. Taylor Energy is an independent oil company operating 16 platforms in the Gulf without partners. I consider myself an environmentalist, and the record will bear this out - both onshore and offshore.

I come before you today not just as an independent but as an American, because my concerns about the Oil Pollution Act of 1990 are not just the concerns of independent oil producers but the concerns of all Americans about the impact which this law will on our country and our standard of living.

The Oil Pollution Act of 1990 was designed for an Exxon Valdez situation. But that was not the target it hit. Ironically, under Title I, the companies least affected will be the majors and the state least affected will be Alaska.

We should not delude ourselves into thinking that this law affects only oil tankers and oil producers. It will shut down America's economy from fishermen in Maine to shrimpers in the Gulf. This Act will hurt not just the economy in the Gulf but cost jobs in every Congressional district and increase the threat to our environment as well.

- It will reduce oil production in the Gulf by about 300,000 bpd.

- It will add $1.97 billion to our bill for oil imports and increase our balance of payment deficit by that amount.

- It will increase the power of OPEC over our economy.

- It will disrupt gathering systems that bring crude from onshore wells - even ones owned by majors -- to America's refiners.

- It will dramatically increase unemployment.

- It will destroy one of the largest sources of federal and state tax and royalty revenues.

- It will create one of the largest bank crises in America's history.

- It will re-concentrate the oil industry into the hands of the majors.

- It will disrupt sales of heating oil and diesel fuel to our homes, farms, schools and hospitals.

- It will curtail deliveries of gasoline to 60% of our service stations.

- It will shut down many of our fishing boats and marinas, and

- It will greatly increase the number of tankers in American waters.

I will discuss each of these in the course of my remarks.

At a time when we need to stimulate the economy, this is not what America wants.

Why then will it happen?

First, the Act is not limited to crude oil. Section 1001(23) cleverly defines "oil" to include gasoline, diesel fuel, home heating oil, kerosine and jet fuel. [Attachment A sets forth an analysis of that definition.]

Second, Section 1016(c) requires operators of "offshore facilities" to maintain evidence of financial responsibility in the amount of $150 million. It is the same requirement for the smallest operator as it is for Exxon. There is no de minimis standard. There is no sliding scale.

Why is this a problem? For years independents such as Taylor have established financial responsibility through insurance cover issued by Lloyds of London. But Lloyds will not insure risks under the Oil Pollution Act of 1990. [Attachment B is a letter evidencing the decision of Lloyds not to provide coverage under that Act.]

Why won't Lloyds cover this risk?

- It may be because of open ended liability through repeal of the Limitation of Liability Act of 1851.

- It may be because it eliminates federal pre-emption and exposes operators to unlimited strict liability laws in the various states.

- It may be because of the right of direct action by any claimant against insurers.

- It may be because § 1016(e) allows the President to specify policy and contractual terms, conditions and defenses.

- It may be because § 1016(f) provides that "the guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor." Perhaps this even eliminates the defense of non-payment of the premium.

I am simply reporting what I am told by my insurers. But this much is clear. If Taylor Energy cannot get coverage, other independents will not get it either.[1]

Without the ability to insure, the Oil Pollution Act of 1990 will shut down Taylor Energy and every other independent. But the shutdowns and damage to the economy will not be limited to oil producers or limited to the Gulf. The Act is far more sweeping.

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[1] As to self insurance, if the regulatory approach for vessels is used for facilities -- i.e., U.S. working capital exceeding worldwide liabilities -- and companies are treated on a consolidated basis with their parents and subsidiaries, not even Shell or British Petroleum could self-insure.

Section 1001(9) defines "facility" to include not just oil production platforms but motor vehicles and pipelines.

Section 1001(22) then defines "offshore facility" as any "facility" - that is pipeline or truck - "in, on, or under any of the navigable waters of the United States." If a gathering pipeline goes under a river it is under navigable water and thus an "offshore facility".

What about trucks? Under the definition of oil they too are covered if they haul crude oil, gasoline, diesel fuel or home heating oil. They become "offshore facilities" if they run "in, on, or under any navigable waters." Thus, they too are probably "offshore facilities" if they cross any navigable stream, as they all do. Surely Congress knew that a truck spilling oil from a bridge can pollute a stream as much or more than a truck spilling oil while on a barge. If a truck crossing a river is an "offshore facility" it must post the same $150 million financial responsibility as Exxon.

But even if a truck is not considered an "offshore facility," it may still be shut down. If a truck is an "onshore facility," it faces liability for spills under § 1004(a)(4) of $350 million which the President may or may not reduce to $8 million under § 1004(d)(1). While "onshore facilities" do not have to establish financial responsibility under the Act, the trucker's bankers will surely require insurance to protect the collateral. Truckers must ask themselves whether insurance companies will take risks for onshore facilities that they will not take for offshore facilities where the liabilities and lack of defenses are the same? Probably not.

That is how the law operates.

What then will be its effect?

In a word, it will shut down America. It will put a chill across the land, destroy jobs, dry up tax revenues, and take hope and comfort from nearly every home.

Let us now look at these effects one by one.

First, the Oil Pollution Act of 1990 shuts down all independent oil production in the Gulf. The fault is not with the Minerals Management Service. It has the mission of issuing regulations which faithfully implement the law without destroying the country. It is Mission Impossible. The problem is that independents cannot obtain insurance for the $150 million financial responsibility required by the Act. Without that insurance they must shut down and still face fines that will drive them into bankruptcy.

Ironically, each independent in the Gulf, no matter how small, must post $150 million under the Act. Yet LOOP, which transfers one million bpd in offshore waters using rubber hoses, can have its financial responsibility cut to $50 million[2], even though it is handling more oil per day than all of the Gulf producers, majors and independents, combined.

Oil production in the Gulf is now running 854,000 bpd. Thirty-five percent of Outer Continental Shelf leases are now held by independents. That percentage is increasing as majors have been withdrawing from Gulf areas and increasing their efforts in foreign countries. Today roughly 300,000 bpd is produced in the Gulf by independents. At $18 a barrel that is $1.971 billion per year in production that will be lost to

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[2] § 1004(d)(2)(C).

America, far more than the clean up costs of possible spills which the Act tries to address.

The importance of the independents must be understood. The U.S. accounts for 44% of the world's current drilling activity, and 85% of the wells drilled in the lower 48 states are drilled by independents. In the lower 48 states, independents account for 49% of crude production and 63.6% of natural gas production, and those percentages are also increasing. [See Attachment C].

I said earlier that the majors would be the companies least affected by Title I. That is because most majors can establish $150 million in financial responsibility. It is the independents that will be driven out.

I also said that Alaska would be the state least affected. That is because only 1% of independents operate in Alaska, the lowest percentage of any state with significant oil production.

Onshore independents will also be affected because the same insurance problems will affect them in meeting their new liability limits of $8 million to $350 million.

As we understand the proposals, natural gas will be exempted unless its production involves more than a de minimis amount of condensate. Unfortunately, gas wells offshore Louisiana produce significant amounts of condensate and thus the problem for our gas wells is the same as for our oil wells. Therefore, the Act will sharply curtail gas production in the Gulf.

Second, the Act will add at least $1.97 billion to our balance of payments deficit, just on the loss of offshore production. The production lost by the independents will not be recovered in this country. The majors do not want the independents' leases because majors cannot operate small fields economically. That is why they have been selling them to the independents and moving more and more of their efforts overseas.

The production lost from the independents will have to be made up through imports, and thereby increase the outflow of American wealth to other nations. In the last Presidential campaign, I thought that this was what all the candidates wanted to avoid.

Third, those added imports will increase the power of OPEC. We remember the last time OPEC had a choke hold on our economy. We remember the gas lines, the soaring prices and the hot tempers. We resolved then to do something about it. We talked about Energy Independence. Yet here, in one Act, we have thrown it all away, turned back the clock, and put OPEC in the drivers seat of every American car.

The 300,000 bpd of additional imports must come ultimately from one place - the Middle East - with 54.6% of the world's proven oil reserves. The 20 to 60 billion barrels of oil yet to be discovered in the U.S. will largely stay in the ground without the efforts of the independents which drill 85% of our wells.

Fourth, production shut-ins forced by the Act will affect not just independents but majors as well. In many areas of the country, such as Montana, Wyoming, and Colorado, wells owned by majors have their oil moved by independent pipelines (or trucks) to larger pipelines. These gathering systems cross navigable waters and are "offshore facilities" under the Act. Because they will not be able to get insurance,[3] they will also shut

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[3] A list of pipelines is Attachment D. Most are independent.

down, thereby further reducing the domestic production available to refineries.

Fifth, at a time when we are trying to stimulate the economy and create jobs, the Act will cause a huge surge in the unemployment rolls. In the last decade the oil industry lost 450,000 jobs, more than the steel and auto industries combined.

Independents, including pipelines and truckers, will be forced to not only lay off all of their own workers but cause radical cutbacks at their suppliers -- drilling contractors, tow boat operators, tool companies, wireline services, air operators, boat yards and others.

Sixth, oil exploration and production provides one of the largest sources of federal and state tax and royalty revenue. I thought we were trying to increase tax revenues. Yet this Act, like a falling sword, cuts off all the revenue from operations of the independents. It will mean still higher taxes for everyone else, to go along with higher payments for unemployment compensation and higher payments for imports.

Seventh, the Act will create one of the largest bank crises in American history. If independents cannot operate, what are they going to do? The majors do not want these properties back. So the only option is to default on the loans, and give the leases to the banks.

Yet the banks could not take back the properties, or they would be liable for the $25,000 per day per facility non-compliance fine. Thus the banks could neither collect the loans nor take back the collateral. I am sure that your Banking Committee would be interested in this.

At Taylor Energy, it will mean personal bankruptcy for me and 120 families will be without a bread winner.

Eighth, the effect of the Act, ironically, would be to re-concentrate American's remaining oil production and pipeline systems into the hands of the majors. This would come as a great shock to the Federal Trade Commission which not too long ago was trying to break up these same majors with vertical divestiture. A competitive industry would become an oligopoly overnight.

Ninth, the Act will disrupt or halt supplies of heating oil and diesel fuel to our homes, farms, schools and hospitals. As noted before, heating oil and diesel fuel are both "oil" within the meaning of the Act. Years ago, much of our heating oil was distributed by majors. That is no longer true. Today over 95% is distributed by independent dealers whose trucks run over navigable streams. [See Attachment E.] As discussed above, these trucks are going to be disrupted, if not halted altogether, whether properly treated as "offshore facilities" requiring $150 million in financial responsibility or as "onshore facilities" with liability up to $350 million for which no insurance may be available.

Either way, homes will go cold, hospitals, schools and, apartment houses will be without oil heat, and Congressional phones will ring.

America's farmers are entirely dependent upon diesel fuel for their tractors and equipment. They too are supplied by independent dealers who will not be able to meet the requirements of this Act. If farms are cut off, the cries from Iowa will be greater than they were during the flood.

Tenth, the suburbanite who fills up at the Chevron or Texaco station may be relaxed in the knowledge that Chevron and Texaco can meet the financial requirements of the Act so that deliveries

will not be affected. But this is not the case. Approximately 60 percent of branded service stations are not supplied by the majors but through jobbers who are independent businesses. [See Attachment F]. Their trucks also go over navigable streams and they too will face massive insurance problems.

Worse yet, these jobber stations are not spread evenly around the country. In many parts of the country all of the stations are jobber stations and there could be no gasoline for sale at all.

Finally, the Act will devastate fishing boats, marinas and boating enthusiasts. Many marine terminals that service the fishing fleets in New England and other areas are run by independent distributors. Such terminals often have underwater hoses, tanks and floating equipment and are often supplied from the water. The same is true of marinas for recreational boating. Such facilities are "offshore facilities" under the Act and will be shut down.

The result is that if this law is implemented, there will be major disruptions to almost every part of American life.

America without heat for its homes, gas for its cars, fuel for its farms and jobs for its workers would not be America as we know it.

What should be done?

These distortions to our economy would be eliminated if the Oil Pollution Act of 1990 were narrowed to the problem Congress was trying to address: petroleum transportation.

The spills that have caught the world's attention have been oil transportation spills -- by tankers and pipelines -- not oil production spills. Amoco Cadiz, Exxon Valdez and just this month OMI Charger off Galveston [Attachment G] have all been tanker spills. The pipeline and terminal spills involving Ashland on the Ohio River and the pipeline near Washington, D.C. this summer have not involved production facilities.

Over the last several years the offshore producers have paid $500 million into oil spill liability superfunds, and not a penny has been drawn down because there was no need. None. None at all.

Yet the Act not only focuses on the industry which has not been the problem, but imposes its most punitive provisions against the producers who have not caused the spills. Section 1004(d), for example, limits damage against tanker operators to clean up costs, yet hits offshore producers with clean up costs plus an additional $75 million.

Why the added penalty against the industry which has not caused the problem?

Why pretend that Congress is dealing with Valdez when the most Draconian provisions fall on the producers?

Why indeed, unless Congress wants to drive oil production out of the United States, destroy jobs, reduce federal and state revenues and increase the trade deficit?

Do we really want to increase the number of tankers bringing oil to our shores in the pretense that we are solving the problem? As it is, by the year 2000, over 5,000 tankers will be docking each year at American ports.

We do not need to shut down America.

We do not need to kill a $1.9 billion industry in the Gulf with no spills and no claims against its superfunds.

We do not need to cut off American production and increase tankers in American waters when it is those very tankers which have been the problem.

We do not need an Act that lowers financial responsibility for LOOP to 1/3 that of Taylor Energy when LOOP transfers more crude in one day than all the producers in the entire Gulf.

We must not be the country that taxed itself to win over Communism and then fell at the hands of its own government.

If we are to fuel our farms, heat our homes and power our automobiles, we must not strangle our domestic oil industry, but focus our concerns on the tankers that have spoiled our waters.

We can solve our problems, economic and environmental. We can rekindle the hope in every American heart.

- Not with imports -- but American production.

- Not with bankrupt companies -- but with a thriving domestic industry.

- Not with massive unemployment -- but by saving jobs that are vital to our future and our dreams.

- Not by crippling our balance of payments -- but by making America more energy secure.

- Not with reduced federal and state revenues -- but growing collections that can heal America's finances.

- Not with homes in the cold -- but industry aglow with production that will curb the growth of foreign tankers in American waters.

Then and only then can we renew our industrial base and assure the environmental quality that we want for ourselves and the next generation of Americans.

ATTACHMENT A

The Act's definition of "oil" is broad enough to sweep in gasoline, diesel and home heating oil. This conclusion is supported by analysis of the plain language of the definition, its legislative history and judicial interpretation.

A. The Plain Language of the Oil Pollution Act of 1990.

The Act defines "oil" broadly, limited by excluding CERCLA hazardous substances:

> "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

33 U.S.C. § 2701(23) (emphasis added).

The first portion of the definition literally includes in the term "oil" the commercial products of petroleum and fuel oil, plus the by-products sludge, oil refuse and oil mixed with certain wastes. The underlined language excludes from the definition of "oil" those oil products, including crude oil and fractions of crude, that are not specifically listed or designated as hazardous substances under any of the six subparts of the definition of the term "hazardous substance" under CERCLA, 42 U.S.C. § 9601(14).

As background, the CERCLA definition of "hazardous substance" sweeps in elements, compounds and mixtures identified as hazardous under five separate environmental laws:

The Clean Water Act -- [Subparagraphs A and D of the CERCLA hazardous substance definition] -- Any substance (other than oil as defined by that Act) designated by the EPA Administrator that, when discharged into navigable waters, presents an imminent and substantial danger to the public health or welfare. 33 U.S.C. § 1321(b)(2)(A). The Code of Federal Regulations contains a fifteen-page list of such hazardous substances. See 4- C.F.R. § 116.4, Table 116.4A. The definition also embraces any "pollutant" listed as toxic by the EPA under section 1317(a) of the Clean Water Act. EPA lists six toxic pollutants (aldrin, DDT, endrin, toxaphene, benzidene and polychlorinated biphenyls (PCBs) at 40 C.F.R. § 129.4.

The Comprehensive Environmental Response, Compensation & Liability Act -- [Subparagraph B of the definition] -- Any substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. 42 U.S.C. § 9602. EPA provides a 48-page list of CERCLA hazardous substances at 40 C.F.R. § 302.4, Table 302.4.

The Solid Waste Disposal Act -- [Subparagraph C] -- Any substance determined hazardous by the EPA based upon its characteristics of toxicity, persistence, biodegradability, accumulation in tissue, flammability, corrosivity, reactivity and the like. 42 U.S.C. § 6921(a). EPA's listing of hazardous wastes encompasses seventeen pages in the Code of Federal Regulations. See 40 C.F.R. Part 261, Subpart D.

The Clean Air Act -- [Subparagraph E] -- Any hazardous air pollutant designated as such by the EPA pursuant to section 112

of the Act, 42 U.S.C. § 741. Eight such substances are listed at 40 C.F.R. § 61.01(a).

The Toxic Substances Control Act -- [Subparagraph F] -- Any imminently hazardous chemical substance or mixture acted upon by EPA through a civil action for seizure or other relief under 15 U.S.C. § 2606.

Because they are not listed as CERCLA hazardous substances, the plain meaning of the statute is that gasoline, diesel fuel, home heating oil, kerosene and jet fuel are oils within the meaning of the Oil Pollution Act of 1990.

B. Legislative History.

The legislative history of the provision shows that the Act was designed to apply to oil tanker spills, specifically like the Exxon Valdez disaster, down through smaller releases, such as the leak of light no. 2 oil from the World Prodigy off Rhode Island to the spill on the Delaware River/Bay, all in the 1990 time period. See S. Rep. No. 101-94 at 18-19, 1990 U.S. Code Cong. & Admin. News at 740. The definitional limitation was specifically inserted to preclude duplication of CERCLA:

> The Conference substitute includes a definition of the term "oil", which is based on the definition of the term in section 311 of the FWPCA. The definition has been modified, however, to clarify that it does not include any constituent or component of oil which may fall within the definition of "hazardous substances", as that term is defined for the purposes of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This ensures that there will be no overlap in the liability provisions of CERCLA and the Oil Pollution Act.

H. Conf. Rep. No. 101-653 at 102, 1990 U.S. Code Cong. & Admin. News at 780. Section 311 of the FWPCA, better known as the Clean Water Act, generously defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." 33 U.S.C. § 1321(a)(1).

C. Judicial Interpretation of the Definition.

The courts have not yet specifically interpreted this provision. However, the Ninth Circuit has definitively stated that petroleum, including unrefined and refined gasoline (even with lead or other components or additives present), is excepted from the CERCLA definition of "hazardous substance." Wilshire Westwood Associates v. Atlantic Richfield Corp., 881 F.2d 801 (9th Cir. 1989). See also Niecko v. Emro Marketing Co., 769 F. Supp. 973 (E.D. Mich. 1991) (presence of substances "inherent" in petroleum, such as benzene, toluene, ethyl benzene and xylene, did not take substance out of petroleum exclusion and make it a hazardous substance). The amount or concentration of the added hazardous substance should be immaterial. See Amoco Oil Co. v. Borden, Inc., 889 F.2d 664 (5th Cir. 1989).

ATTACHMENT B

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please quote reference

your reference

our reference PH/cm

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Dear Sirs

UNITED STATES OIL POLLUTION ACT OF 1990 (OPA 1990)

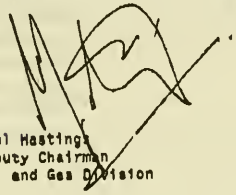
Having been made aware of activity in preparation for implementing the provisions of the above referenced Act, we felt it appropriate as international insurance and reinsurance brokers to appraise you of our concerns.

The commercial insurance market has since its inception endeavoured to provide protection to assureds for the exposures that arise in the course of their business operations. It has always been recognised that the ability of insurers to pay is limited and it has therefore been necessary that the coverages they offer for sale do express a monetary limit. Indeed over recent times due to a contraction of the market, total capacity has reduced and therefore the market's ability to provide coverage for some of the top layers of exposure has diminished or disappeared completely.

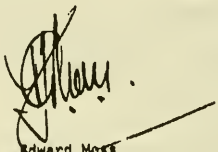
The provisions of the OPA 1990 propose that insurers provide a guarantee for pollution exposure on an unlimited basis. This would constitute a fundamental change in the basis upon which underwriters have traditionally underwritten this business and would mean their guaranteeing for sums potentially vastly in excess of their ability to pay. Clearly this is something they could not provide. It is perhaps worth noting that even in advance of the full implementation of the new Act, underwriters under liability policies are stating that the policy does not constitute evidence of financial responsibility under the OPA 1990 or any similar legislation.

It is always the desire of the insurance market place to provide the protection necessary to assist assureds to carry on their business in the comfort that if casualty strikes, then their insurance coverage will respond. We believe most strongly that the provisions of the 1990 Act will make it impossible for assureds or underwriters to realistically and effectively respond.

Yours faithfully
FOR AND ON BEHALF OF WILLIS FABER AND DUMAS LTD



Paul Hastings
Deputy Chairman
Oil and Gas Division



Edward Moss
Managing Director
Oil and Gas Division

ATTACHMENT C

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

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WASHINGTON, D. C. 20036
(202) 857-4722

SCOTT A. ESPENSHADE
ECONOMICS & RESEARCH ASSOCIATE
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September 22, 1993

Taylor Energy
c/o William E. Wickens
Wickens & Lebow
Suite 450
1101 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Wickens:

Pursuant to your request for information on the independent sector of the crude oil and natural gas industry, I have compiled data which show the independents involvement. Current trends reveal that although the exploration and production segment of the petroleum industry is shrinking, independents are becoming the predominant players in the United States.

The following table will show that for the five years listed 1988 through 1992, that independents have shown a steady increase in their role of supplying America's crude oil and natural gas. Arthur Andersen publishes a study titled *Oil & Gas Reserve Disclosure*, from the 1993 edition I used their reported production for Majors. Arthur Andersen considers a major to be any company that has in excess of one billion barrels of oil equivalent during their survey period. For the total U.S. production, I used data from the Energy Information Administration (EIA).

The table illustrates that independents have increased their share in supplying america's energy needs. In crude oil production, independents have increased from 35.5% in 1988 to 37.3% for the entire U.S.in 1992. For the Lower 48, they have seen a 1.8% increase to 49%. In natural gas production, independents supply 63.6% of the natural gas, a 1.4% increase from 1988. If you have anymore questions feel free to call me.

Sincerely,

Scott A. Espenshade

Enclosures

Crude Oil Production					
(Million Bbls.)	1988	1989	1990	1991	1992
Majors	1,917	1,813	1,714	1,726	1,642
Independents	1,054.1	965.7	970.6	981.2	975.4
Total US	2,971.1	2,778.7	2,684.6	2,707.2	2,617.4
US less Alaska	2,234.9	2,094.7	2,037.4	2,050.9	1,991.8
Percentage Production by Independents- Total US	35.5 %	34.8 %	36.2 %	36.2 %	37.3 %
Percentage production by Independents US less Alaska	47.2 %	46.1 %	47.6 %	47.8 %	49.0 %
Natural Gas Production					
(Bcf)	1988	1989	1990	1991	1992
Majors	6,461	6,679	6,696	6,606	6,465
Independents	10,642	10,632	11,114	11,145	11,312
Total US	17,777	17,751	17,810	17,311	17,103
Percentage Production by Independents- Total US	62.2 %	61.4 %	62.4 %	62.8 %	63.6 %
Source: Arthur Andersen, EIA, IPAA					

Company	Miles of pipeline — Gathering	Trunk — Crude	Trunk — Products	Total	Deliveries, 1,000 bbl — Crude	Products	Total	Total trunkline traffic, million bbl-miles — Crude	Products	Total	Carrier property	Fiscal data, $1,000 — Change	Operating revenue	Income
Adobe Offshore Pipeline Co.	—	—	—	—	941	—	941	1	—	1	1,318	—	392	237
Air Force Pipeline Inc.	—	—	5	5	—	1,449	1,449	—	7	7	353	—	292	30
Algonquin Pipe Line Co. (final)	14	51	—	65	82	—	82	4	—	4	1,544	– 416	69	– 21
All American Pipeline Co.	—	1,219	—	1,219	43,604	—	43,604	53,153	—	53,135	1,564,453	21,417	48,849	– 99,724
Amerada Hess Pipeline Co.	—	*818	—	*818	10,022	—	10,022	7,932	—	7,932	153,816	1,310	36,903	13,155
American Petrofina Pipeline Co.	—	1,104	—	1,104	34,878	—	34,878	775	—	775	47,608	1,833	12,957	2,145
Amoco Capline Pipeline Co. (new)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Amoco Cushing-Chicago Pipeline Co. (new)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Amoco High Island Pipeline Co. (new)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Amoco Pipeline Co.	2,248	7,837	2,298	12,183	330,344	153,118	483,460	95,354	11,731	107,085	679,781	29,821	199,948	123,192
Antelope Pipe Line Co.	—	88	—	88	11,822	—	11,822	1,027	—	1,027	2	—	3,254	791
ARCO Pipe Line Co. (final)	908	*2,233	2,566	*5,707	205,552	80,414	285,966	19,679	4,058	23,735	385,459	383,769	64,107	11,051
ARCO Transportation Alaska Inc. (new)	1,626	*2,398	2,864	*6,888	178,387	15,004	193,371	17,218	9	117,225	2,119,094	72,839	488,811	157,620
Ashland Pipe Line Co.	684	1,154	—	1,838	105,810	421	106,331	90,649	8	90,655	175,493	30,678	62,293	19,404
Atlantic Pipeline Co.	—	12	929	941	49,488	46,525	96,013	158	6,479	6,637	76,815	4,453	35,867	4,879
Badger Pipe Line Co.	—	—	334	334	—	69,777	69,777	—	3,821	3,821	26,403	231	12,538	2,883
Belle Fourche Pipeline Co.	210	78	—	288	2,877	—	2,877	106	—	106	17,120	608	2,490	498
Black Lake Pipe Line Co.	—	—	255	255	—	2,472	2,472	—	440	440	10,501	– 135	2,006	639
BP Offshore Pipelines Inc.(new)	—	—	—	—	1,728	—	1,728	133	—	133	3,277	3,272	2,179	886
BP Oil Pipeline Co.	—	456	280	736	185,627	96,163	281,790	46,648	11,527	58,173	86,190	– 12,227	71,220	10,522
BP Pipeline (Alaska) Inc.	—	*818	—	*818	342,536	—	342,536	266,092	—	266,092	5,043,838	43,743	1,168,030	317,185
Buccaneer Pipe Line Co.	—	2	—	2	168	—	166	349	—	349	176	—	58	– 48
Buckeye Pipe Line Co., L.P.	—	—	3,132	3,132	—	269,141	269,141	—	33,545	33,545	481,173	7,628	133,892	23,658
Buckeye Pipe Line Co. of Mich., L.P.	—	160	4	164	11,391	7,444	18,835	1,260	202	1,462	41,457	122	8,215	– 244
Butte Pipe Line Co.	—	373	—	373	32,273	—	32,273	7,311	—	7,311	19,802	449	8,555	1,639
C&T Pipelines Inc.	—	—	62	62	—	392	392	—	85	85	351	—	521	2
Calnev Pipe Line Co.	—	—	583	583	—	28,982	28,982	—	5,924	5,924	101,438	1,677	21,253	5,312
Cenex Pipeline Co. (new)	—	—	698	698	—	2,288	2,288	—	581	581	39,616	1,463	1,814	1,177
Chaparral Pipeline (NGL) Co.	—	—	829	829	—	49,310	49,310	—	24,759	24,759	94,333	742	27,833	11,091
Chase Transportation Co.	—	—	718	718	—	12,143	12,143	—	3,918	3,918	39,050	418	6,901	2,873
Chevron Pipe Line Co.	2,014	2,482	3,291	7,787	330,891	241,029	571,920	23,463	45,430	68,893	854,503	22,528	225,221	80,112
Chicap Pipe Line Co.	—	203	—	203	99,147	—	99,147	15,024	—	15,024	38,147	3,378	13,709	4,361
Chisholm Pipeline Co.	—	—	201	201	—	4,404	4,404	—	812	812	20,264	619	1,809	105
Citgo Pipeline Co.	585	692	—	1,277	112,163	8,182	120,345	2,812	7	2,819	48,358	1,372	18,897	2,583
CKB Petroleum Inc.	—	—	—	—	518	—	518	27	—	27	4,757	—	1,419	– 561
Clarco Pipe Line Co.	90	—	—	90	1,045	—	1,045	94	—	94	3,789	—	277	– 84
Clark Pipe Line Co.	—	55	—	55	20,338	—	20,338	1,114	—	1,114	1,489	44	2,918	1,190
CNG Pipeline Co.	—	—	—	—	639	—	639	—	—	—	4,567	18	1,041	418
Coastal Pipeline Co.	—	—	8	8	—	17,189	17,189	—	1,158	1,158	8,773	151	3,993	1,632
Cochin Pipeline System	—	—	1,197	1,197	—	28,060	28,060	—	23,042	23,042	241,507	154	48,566	23,565
Collins Pipeline Co.	—	—	124	124	—	48,724	48,724	—	6,042	6,042	17,475	1,031	8,578	1,465
Colonial Pipeline Co.	—	—	5,274	5,274	—	659,814	659,814	—	684,556	684,556	1,410,432	20,978	516,567	151,238
Conoco Pipe Line Co.	4,519	1,409	2,140	8,068	194,232	82,678	258,908	13,886	10,877	24,763	260,088	17,078	86,867	38,655
Conquest Transmission Co.	—	—	—	—	6	—	6	—	—	—	150	—	35	– 587
Cook Inlet Pipe Line Co.	—	55	—	55	10,637	—	10,637	329	—	329	63,004	470	20,048	8,241
Crown-Rancho Pike Line Corp.	—	—	—	—	7,527	—	7,527	2,893	—	2,893	2,200	16	2,292	1,669
CXY Offshore Systems Inc.	—	—	—	—	48	—	48	5	—	5	1,875	—	74	88
Diamond Shamrock Refining & Marketing Co.	—	—	622	622	—	11,352	11,352	—	5,492	5,492	40,035	1,077	10,373	7,183
Dixie Pipeline Co.	—	—	1,303	1,303	—	32,594	32,594	—	18,063	18,063	81,885	2,410	42,407	7,712
Dome Pipeline Corp.	1	8	134	143	—	11,610	11,610	—	238	238	23,254	– 298	2,350	13,321
Emerald Pipe Line Corp.	—	—	113	113	—	2,084	2,084	—	187	187	1,458	26	565	182
Endicott Pipeline Co.	—	26	—	28	42,528	—	42,528	1,106	—	1,106	56,214	348	30,195	16,173
Energy Development Corp. (new)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Enron Liquids Pipeline Co.	—	—	1,578	1,578	—	34,260	34,260	—	15,779	15,779	171,243	3,145	40,397	6,028
Enron Products Pipeline Co. (new)	—	—	104	104	—	3,382	3,382	—	3	3	38,488	18,516	3,282	458
Enterprise Products Co.	—	—	98	98	—	4,201	4,201	—	593	593	20,436	—	3,360	8,801
EPC Partners Ltd.	—	—	268	268	—	6,014	6,014	—	1,898	1,898	48,340	—	3,143	-3,615
Eureka Pipe Line Co.	735	6	—	741	1,593	—	1,593	1	—	1	16,339	342	5,188	282
Ewing Bank Pipeline Co.	—	23	—	23	2,341	—	2,341	54	—	54	7,685	—	1,638	1,003
Explorer Pipeline Co.	—	—	1,397	1,397	—	122,734	122,734	—	86,479	86,479	262,701	2,141	73,417	17,018
Exxon Pipeline Co.	1,820	*5,735	2,602	*10,157	427,640	109,274	536,914	150,441	6,822	157,263	2,287,550	33,845	608,800	279,923

Company	Miles of pipeline — Gathering	Trunk — Crude	Trunk — Products	Total	Deliveries, 1,000 bbl — Crude	Products	Total	Total trunkline traffic, million bbl-miles — Crude	Products	Total	Fiscal data, $1,000 — Carrier property	Change	Operating revenue	Income
Farmland Industries Inc.	614	239	—	853	22,426	—	22,426	829	—	629	13,789	345	5,333	—
Forest Pipeline Co.	—	12	—	12	623	—	623	4	—	4	1,978	—	293	98
Four Corners Pipe Line Co.	272	1,163	—	1,455	113,676	—	113,676	11,773	—	11,773	169,250	6,604	52,795	13,051
Frontier Pipeline Co.	—	290	—	290	1,564	—	1,564	279	—	279	49,139	26	2,164	-2,231
Giant Industries Arizona Inc.	176	135	11	322	7,003	1,511	6,514	455	17	472	6,383	1,726	2,697	-6,276
Harbert Oil & Gas Corp.	—	—	—	—	176	—	176	—	—	—	—	—	94	-16
Heartland Pipeline Co.	—	—	36	36	—	4,312	4,312	—	1,268	1,268	11,464	1,358	3,010	-359
Hess Pipeline Co.	—	349	—	349	26,389	—	26,389	2,207	—	2,207	53,747	596	12,190	2,921
Hi-Bol Pipeline Co. (new)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Howell Crude Oil Co	—	6	—	6	557	—	557	3	—	3	1,348	35	97	926
Interstate Storage & Pipeline Co.	—	—	23	23	—	2,767	2,767	—	64	64	3,231	—	2,100	574
Jayhawk Pipeline Corp.	787	729	—	1,516	49,633	—	49,633	3,687	—	3,887	30,100	560	13,371	3,320
Joliet Pipe Line Co.	29	—	—	29	6,867	—	6,867	—	—	—	12,012	75	6,030	5,075
Kaneb Pipe Line Co. Operating Partnership L.P.	—	—	2,101	2,101	—	51,389	51,389	—	13,241	13,241	113,695	2,411	39,287	15,472
Kanal Pipe Line Co.	—	23	—	23	27,564	16,387	43,951	62	—	52	13,142	175	7,435	2,272
Kerr-McGee Pipeline Corp.	8	56	—	64	1,089	—	1,089	31	—	31	7,114	1	1,518	1,182
Kiantone Pipeline Corp.	—	78	—	78	20,303	—	20,303	1,588	—	1,588	10,413	44	4,264	569
Koch Pipelines Inc.	614	1,108	1,828	3,845	49,662	57,107	106,678	5,341	12,927	18,288	343,303	39,611	69,660	20,231
Kuparuk Transportation Co.	—	37	—	37	120,392	—	120,392	3,846	—	3,846	127,336	—	-170,607	-270,915
Lake Charles Pipe Line Co.	—	—	13	13	—	68,616	68,616	—	431	431	11,324	200	3,329	968
Lakehead Pipe Line Co. Inc. (final)	—	2,614	—	2,614	436,201	—	436,201	335,775	—	335,775	596,179	25,774	198,260	39,987
Lakehead Pipe Line Co. L.P. (new)	—	2,614	—	2,614	6,056	—	6,056	4,664	—	4,664	609,776	609,776	2,972	695
Largo Co.	—	—	—	—	921	—	921	38	—	38	12,705	24	1,311	18,574
Laurel Pipe Line Co.	—	—	348	348	—	30,554	30,554	—	4,568	4,568	46,036	-746	13,008	2,336
Locap Inc.	—	69	—	69	227,347	—	227,347	13	—	13	121,206	743	20,367	7,019
Marathon Pipe Line Co.	1,207	1,723	1,470	4,400	361,010	246,759	607,769	62,311	16,455	80,766	376,616	3,441	152,286	45,032
McMoran Pipeline Co.	—	—	—	—	190	—	190	16	—	16	2,600	—	300	-139
Meridan Oil Frontera Inc.	—	—	—	—	161	—	161	26	—	26	1,394	16	317	16
Mesa Transmission Co.	—	11	—	11	220	—	220	12	—	12	10,77	485	397	-1,172
Mid-America Pipeline Co.	—	19	7,131	7,150	29,045	133,601	162,646	3,672	57,423	61,285	465, 06	9,752	153,213	44,796
Mid-Continent Pipe Line Co. (new)	—	—	—	—	34,289	—	34,289	3,109	—	3,109	54,167	544	19,854	5,496
Mid-Valley Pipe Line Co.	—	1,086	—	1,086	144,394	—	144,394	72,498	—	72,498	105,691	3,067	45,847	11,905
Milne Point Pipe Line Co.	11	—	—	11	7,458	—	7,458	—	—	—	27,237	262	8,952	5,420
Minnesota Pipe Line Co.	—	675	—	675	78,422	—	78,422	20,111	—	20,111	114,083	3,009	26,664	4,161
Mitco Pipeline Co.	6	—	—	6	13	—	13	—	—	—	2,105	—	30	-61
Mobil Alaska Pipeline Co.	—	*616	—	*616	27,550	—	27,550	21,856	—	21,856	409,762	3,560	102,756	38,681
Mobil Eugene Island Pipeline Co.	—	134	—	134	27,145	—	27,145	1,771	—	1,771	47,046	-161	23,773	12,752
Mobil Pipe Line Co.	3,143	4,842	1,554	9,539	208,235	99,982	308,217	60,814	10,671	61,685	335,459	8,536	143,604	45,724
Navajo Pipeline Co.	—	—	387	387	—	6,249	6,249	—	1,316	1,316	34,766	48	6,839	1,667
Northern Rockies Pipe Line Co.	—	—	—	—	401	—	401	31	—	31	1,046	—	132	193
NW Pipeline Co.	—	—	—	—	2,143	—	2,143	260	—	260	6,500	62	2,449	1,341
Ohio Oil Gathering Corp. II	155	—	—	155	4,377	—	4,377	—	—	—	11,552	136	7,536	446
Ohio River Pipe Line Co.	—	—	400	400	—	15,278	15,278	—	2,025	2,025	30,789	3,090	8,611	2,497
Ottenkring Pipeline Inc.	—	19	13	32	77,700	9,846	87,546	901	26	927	19,494	2,736	6,843	1,624
Olympic Pipe Line Co.	—	—	416	416	—	98,092	98,092	—	17,246	17,246	63,807	3,902	26,806	6,785
Osage Pipe Line Co.	—	136	—	136	40,560	—	40,560	5,498	—	5,498	19,792	311	7,693	3,005
Oxy Pipeline Inc.	—	—	—	—	668	—	668	21	—	21	2,146	-1,489	451	1,333
Paloma Pipe Line Co.	—	—	—	—	26,686	—	26,686	1,415	—	1,415	6,246	409	2,579	489
Pennzoil Offshore Pipeline Co.	—	4	27	4	364	—	364	11	—	11	4,025	—	285	-93
Pharrlex Pipeline Co.	—	—	—	27	—	206	206	—	6	6	2,590	—	281	32
Phillips Alaska Pipe Line Corp.	—	*616	—	*616	9,161	—	9,161	7,201	—	7,201	130,770	1,201	33,644	9,916
Phillips Pipe Line Co.	986	808	4,293	6,085	58,545	165,681	242,226	11,940	40,507	52,447	604,331	127,965	153,521	30,672
Pioneer Pipe Line Co.	—	—	299	299	—	18,830	18,830	—	3,543	3,543	10,619	69	6,252	982
Plantation Pipe Line Co.	—	—	3,162	3,162	—	179,977	179,977	—	112,825	112,625	316,116	3,751	112,137	23,011
Platte Pipe Line Co.	—	1,282	—	1,282	39,965	—	39,965	22,975	—	22,975	60,877	243	22,776	9,090
Pogo Offshore Pipeline Co.	—	—	—	—	166	—	166	5	—	5	1,341	3	286	77
Point Arguello Pipeline Co.	—	26	—	28	5,395	—	5,395	152	—	152	268,858	14,655	29,990	46,579
Point Pedernales Pipeline Co.	—	46	—	46	5,047	—	5,047	116	—	116	53,365	660	16,596	4,032
Portal Pipe Line Co.	337	615	—	952	17,433	—	17,433	6,474	—	6,474	46,348	236	11,920	3,581
Portland Pipe Line Corp.	—	177	—	177	56,216	—	56,216	9,710	—	9,710	42,761	290	26,701	8,960
Razorback Pipeline Co.	—	—	67	67	—	2,557	2,557	—	171	171	11,172	3,832	1,716	120

LIQUID PIPELINES (Continued)

Company	Miles of pipeline: Gathering	Trunk: Crude	Trunk: Products	Total	Deliveries, 1,000 bbl: Crude	Products	Total	Total trunkline traffic, million bbl-miles: Crude	Products	Total	Carrier property	Fiscal data, $1,000: Change	Operating revenue	Income
Samedan Pipeline Corp.	2	–	–	2	5	–	5	–	–	–	–	–	1,871	– 168
Scurlock Permian Pipeline Corp. (new)	–	–	–	–	–	–	–	–	28,456	28,456	210,527	6,252	38,439	12,544
Seminole Pipeline Co.	106	–	834	740	–	57,538	57,538	–	43,713	43,713	484,474	11,795	156,545	61,804
SFPP, L.P.	–	–	3,298	3,298	–	321,088	321,088	3,838	3,773	7,611	55,098	13,769	20,307	2,822
Shamrock Pipe Line Corp.	549	418	603	1,570	46,957	25,943	72,900	99,434	6,640	106,074	518,797	22,575	197,216	81,060
Shell Pipe Line Corp.	2,081	4,616	510	7,207	443,049	137,571	580,620	–	10	10	4,915	– 998	768	623
Sonat Oil Transmission Inc.	–	56	–	58	890	–	890	42,345	–	42,345	54,612	1,828	22,686	3,777
Southcap Pipe Line Co.	–	–	–	–	68,325	–	68,325	–	–	–	669	–	3,705	438
Sun Oil Line Co. of Michigan	–	4	–	4	20,828	–	20,828	3,380	11,784	15,164	165,450	5,049	68,170	13,688
Sun Pipe Line Co.	338	380	1,738	2,456	108,208	123,825	232,033	xx	xx	xx	xx	xx	xx	xx
Sun Pipe Line Service Co. (new)	xx	xx	xx	xx	xx	xx	xx	–	74,612	74,612	513,028	12,135	138,796	28,424
TE Products Pipeline Co. L.P.	–	–	4,199	4,199	–	147,247	147,247	420	–	420	15,293	– 2	1,060	– 1,523
Tecumseh Pipe Line Co.	–	207	–	207	8,668	–	8,668	74,083	7,152	81,235	472,304	26,064	147,708	32,572
Texaco Pipeline Inc.	1,810	2,487	1,055	5,452	429,797	138,567	568,364	10,801	–	10,801	98,540	6,064	31,687	9,171
Texas-New Mexico Pipe Line Co.	1,654	2,193	–	3,847	110,310	–	110,310	10,801	1,430	12,231	69,472	14,687	13,053	– 2,522
Total Pipeline Corp.	193	436	70	699	73,266	17,452	90,718	120	–	120	7,946	122	944	– 276
Trans Mountain Oil Pipeline Corp.	–	64	–	64	2,677	–	2,677	–	–	–	3,321	15	159	17
Transco Terminal Co.	–	–	–	–	314	–	314	–	507	507	4,116	132	1,135	34
Trident NGL Pipeline Co. (formerly OXY NGL Pipeline Co.)	–	–	108	108	–	4,779	4,779	–	–	–	1,117	909	277	85
UMC Pipeline Corp.	–	–	–	–	189	–	189	–	–	–	–	–	–	–
Unocal California Pipeline Co. (new)	–	–	–	–	–	–	–	–	4	4	217,867	2,049	49,166	5,686
Unocal Pipeline Co.	236	*1,448	18	*1,898	62,807	515	63,322	11,871	8407	11,875	9,062	29	1,765	30
West Emerald Pipeline Corp.	–	–	427	427	–	3,184	3,184	–	7,887	7,887	36,669	391	17,569	4,228
West Shore Pipe Line Co.	–	–	321	321	–	65,840	65,840	–	–	3	850	–	138	– 1
West Texas Gulf Pipe Line Co.	–	579	–	579	119,735	–	119,735	47,416	–	47,418	51,193	814	29,724	9,042
Whiskey Springs Oil Pipeline Co.	7	–	–	7	460	–	460	3	–	72	2,7801	133	164	– 87
White Shoal Pipeline Corp.	7	–	–	7	2,847	–	2,847	72	–	72	2,7801	133	164	– 87
Williams Pipe Line Co.	–	–	6,648	6,648	2,916	155,461	158,377	1,504	48,415	49,919	657,471	22,048	140,109	9,178
Wolverine Pipe Line Co.	–	–	821	821	–	97,554	97,554	–	11,928	11,928	74,028	303	28,345	9,128
Wyco Pipe Line Co.	–	–	677	677	–	21,582	21,562	–	3,753	3,753	34,038	1,114	15,301	4,547
Yellowstone Pipe Line Co.	–	–	751	751	–	24,715	24,715	–	8,759	8,759	32,649	608	16,125	4,984
1991 Totals	31,185	59,034	81,252	171,471	6,584,675	4,811,309	11,495,984	1,899,085	1,571,149	3,470,234	26,942,962	1,755,235	6,797,642	1,788,417
1990 Totals	32,349	55,504	60,511	168,384	6,562,462	4,815,951	11,378,413	1,890,603	1,608,928	3,499,731	25,828,192	676,080	7,148,541	2,339,609

Source: U.S. FERC Form 6: Annual Report of Oil Pipeline, Dec. 31, 1991. *Mileage represents 618 miles of Trans-Alaska Pipeline, operated by Alyeskas Pipeline Service Co., Anchorage. This figure is included in column total only once to avoid duplication.

GAS PIPELINES

Company	Miles of pipeline: Transmission	Field	Storage	Total	Total compressor stations: Transmission	Other	Total	Volumes, MMcf: Sold	Trans. for others	Gas plant	Fiscal data, $1,000: Additions	Operating revenues	Net income
Alabama-Tennessee Natural Gas Co.	288	–	–	288	2	–	2	667	32,530	18,692	573	22,957	5,796
Algonquin Gas Transmission Co.*	1,003	–	–	1,003	5	–	5	55,410	173,571	480,325	73,845	396,773	22,777
Algonquin LNG Inc.	–	–	–	–	–	–	–	–	–	22,040	24	4,014	597
ANR Pipeline Co.*	9,493	2,216	469	12,178	44	55	99	145,611	1,163,611	2,823,967	160,378	1,091,745	148,498
ANR Storage Co.	–	–	24	24	–	3	3	–	–	128,111	748	29,233	18,343
Arkansas Oklahoma Gas Corp.	370	184	–	554	2	–	2	13	10	74,389	5,586	44,111	1,952
Arkansas Western Gas Co.	1,326	371	–	1,697	5	–	5	26,500	6,532	150,125	9,357	106,911	1,200
Arkla Inc.*	6,587	3,427	67	10,081	99	71	170	372,847	512,835	3,012,419	229,959	1,821,414	– 53,554
Bayou Interstate Pipeline Sys. (final)	2	–	–	2	–	–	0	1,196	–	–	–	1,866	– 366
Bear Creek Storage Co.	–	–	25	25	–	1	1	–	–	144,091	474	37,068	9,985
Black Marlin Pipeline Co.	106	–	–	106	–	–	–	5	85,654	46,888	338	8,896	1,908
Bluefield Gas Co.	32	–	–	32	–	–	–	925	–	2,950	198	4,705	17
Boundary Gas Inc.	–	–	–	–	–	–	–	23,826	–	–	–	72,979	–

GAS PIPELINES (continued)

Company	Miles of pipeline: Transmission	Field	Storage	Total	Total compressor stations: Transmission	Other	Total	Volumes, MMcf: Sold	Trans. for others	Fiscal data, $1,000: Gas plant	Additions	Operating revenues	Net income
Caprock Pipeline Co.	15	34	—	49	2	2	4	—	16,433	4,409	—	886	– 9
Carnegie Natural Gas Co.	217	869	—	1,086	7	5	12	15,250	6,077	83,320	2,250	53,649	– 881
Centra Pipeline Minn. Inc.	66	—	—	66	—	—	—	—	14,971	4,116	516	1,083	276
Chandeleur Pipe Line Co.	174	—	—	174	—	—	—	—	32,909	22,481	1,419	1,662	711
CNG Transmission Corp.*	4,574	3,702	550	8,826	69	28	97	155,959	403,705	1,620,357	126,013	923,165	75,245
Colorado Interstate Gas Co.*	3,040	3,054	59	6,153	27	38	65	101,314	391,954	761,011	30,676	419,132	82,850
Columbia Gas Transmission Corp.*	11,097	6,476	1,212	18,787	116	59	177	112,619	840,314	2,519,738	183,673	1,021,028	– 869,646
Columbia Gulf Transmission Co.*	4,305	—	—	4,305	13	14	27	—	1,100,557	1,157,545	32,355	182,182	11,160
Columbia LNG Corp.	88	—	—	88	—	—	—	—	9,713	198,763	26	– 1,922	– 6,426
Consolidated System LNG Co.	—	—	—	—	—	—	—	—	—	—	—	19,719	4,412
Distrigas of Mass. Corp.	—	—	—	—	—	—	—	29,667	—	63,966	10,353	122,358	1,125
East Tennessee Natural Gas Co.*	1,149	—	—	1,149	17	1	18	77,456	7,194	209,201	24,461	22,045	10,561
Eastern Natural Gas Co.	—	—	—	—	—	—	—	990	—	5,236	124	4,758	152
Eastern Shore Natural Gas	—	—	—	—	—	—	—	7,150	2,938	20,881	901	24,122	1,290
El Paso Natural Gas Co.*	10,129	6,841	18	16,988	84	6	90	67,619	1,364,174	2,126,675	192,576	1,085,167	69,326
Enserch Corp.	7,109	2,133	—	9,242	40	—	40	177,326	353,473	1,355,780	69,443	965,980	16,416
Equitrans Inc.	529	1,439	138	2,106	6	19	25	39,322	46,411	210,653	4,116	179,308	9,816
Florida Gas Transmission Co.*	4,426	—	—	4,426	—	20	20	84,616	272,804	709,150	128,624	324,046	23,990
Freeport Interstate Pipeline Co.	8	—	—	8	—	—	—	—	—	—	—	—	—
Gas Gathering Corp.	—	32	—	32	—	—	—	—	1,713	193	– 33	207	– 151
Gas Transport Inc.	40	68	—	108	—	—	—	2,308	—	3,862	—	6,846	19
Gasdel Pipeline System Inc.	155	—	—	155	—	—	—	—	6,273	14,176	92	1,959	1,239
Gateway Pipeline Co. (new)	—	—	—	—	—	—	—	—	—	—	—	—	—
Glacier Gas Co.	34	3	37	74	1	—	1	74	—	2,023	121	312	29
Granite State Gas Transmission Inc.	105	—	—	105	1	—	1	48,182	227	11,202	413	151,207	252
Great Lakes Gas Transmission Co.*	1,950	—	—	1,950	14	—	14	14,540	618,485	1,330,959	545,280	185,588	36,238
Great Plains Natural Gas Co.	65	—	—	65	—	—	—	4,387	—	17,679	844	16,736	648
Greeley Gas Co.	336	—	—	336	6	—	6	14,757	2,357	85,512	7,261	83,620	2,775
Green Canyon Pipeline Co.*	67	—	—	67	—	—	—	—	60,074	41,541	228	5,321	– 814
Gulf States Transmission Corp.	6	—	—	6	—	—	—	—	5,156	1,892	—	72	– 301
Hampshire Gas Co.	—	18	—	18	—	1	1	—	—	9,502	476	2,244	520
High Island Offshore System*	203	—	—	203	1	—	1	—	435,080	368,266	1,196	49,204	7,310
Honeoye Storage Co.	11	19	—	30	—	1	1	54	—	6,829	35	2,099	368
Indiana Utilities Corp.	21	—	—	21	—	—	—	535	—	2,745	191	2,230	178
Inland Gas Co. (final)	48	337	—	385	—	5	5	—	—	21,113	219	7,190	1,303
Iowa-Illinois Gas & Electric Co.*	—	—	—	—	—	—	—	41,106	18,641	221,137	11,184	512,536	54,367
Iroquois Gas Transmission Systems L.P.*	191	—	—	191	—	—	—	—	4,445	285,623	—	1,702	15,193
Jackson Prairie Underground Storage	—	—	—	—	—	—	—	—	—	20,985	3,242	—	– 1,251
K N Energy Inc.*	6,346	2,863	26	12,255	30	70	100	79,676	77,608	522,907	43,300	354,297	4,350
Kentucky West Virginia Gas Co.	125	2,092	—	2,217	22	4	26	5,468	24,111	97,038	10,479	50,526	20,372
Kern River Gas Transmission (new)	—	—	—	—	—	—	—	2,145	2,594	3,346	262	4,970	465
Louisiana-Nevada Transit Co.	76	—	—	76	—	—	—	2,145	2,594	3,346	262	4,970	465
Michigan Gas Storage Co.*	545	—	148	693	1	1	2	1,526	229,397	58,158	729	– 1,342	4,474
Mid Louisiana Gas Co.	413	461	—	894	—	1	1	20,689	17,836	94,920	2,257	48,178	2,593
Midwestern Gas Transmission Co.*	354	—	—	354	7	—	7	34,857	99,169	99,071	1,839	129,328	6,207
MIGC Inc.	204	28	—	232	3	2	5	—	13,799	21,621	6,109	3,511	– 2,356
Miss. River Transmission Corp.*	2,016	65	79	2,162	15	5	20	83,836	175,345	472,721	13,443	267,036	12,345
Mojave Pipeline Co.* (new)	—	—	—	—	—	—	—	—	—	—	—	—	—
Moraine Pipeline Co.	16	—	—	16	—	—	—	—	17,173	7,433	4	527	– 386
National Fuel Gas Distribution Corp.	556	328	—	884	—	2	2	115,599	40,668	870,957	41,483	704,495	16,606
National Fuel Gas Supply Corp.*	1,416	1,375	463	3,256	13	3	16	129,037	129,946	371,161	13,952	482,744	19,647
National Pipeline Co.	39	3	—	42	—	—	—	—	1,881	1,622	1	172	36
Natural Gas Pipeline of America*	11,150	1,683	295	13,128	62	19	81	304,560	1,314,356	2,788,985	207,360	1,541,762	264,875
Nora Transmission Co.	16	—	—	16	—	—	—	—	7,976	1,893	198	423	– 86
North Penn Gas Co.	570	241	—	811	—	—	—	5,196	3,236	59,152	3,261	37,211	2,509
Northern Border Pipeline Co.*	824	—	—	824	3	—	3	—	440,314	1,319,513	23,299	153,699	42,650
Northern Natural Gas Co.*	16,481	7,483	225	24,169	58	42	100	248,182	1,363,390	2,455,397	170,816	1,109,899	102,355
Northwest Alaskan Pipeline Co.*	—	—	—	0	—	—	0	335,145	—	—	—	541,626	212
Northwest Pipeline Corp.*	3,491	3,548	7	7,046	31	18	49	30,951	615,576	1,241,393	81,424	386,387	58,294
Oktex Pipeline Co. (new)	16	—	—	16	1	—	1	—	686	695	695	7,521	– 60,816
Orange & Rockland Utilities Inc. (final)	—	—	—	—	—	—	—	20,337	—	166,885	14,436	515,839	44,868
Overthrust Pipeline Co.*	88	—	—	88	—	—	—	—	53,705	63,068	27	11,091	7,209

Company	Miles of pipeline — Transmission	Field	Storage	Total	Total compressor stations — Transmission	Other	Total	Volumes, MMcf — Sold	Trans. for others	Fiscal data, $1,000 — Gas plant	Additions	Operating revenues	Net income
Ozark Gas Transmission System	–	–	–	–	–	–	–	–	24,603	147,223	1,087	21,111	297
Pacific Gas Transmission Co.*	799	42	–	841	13	–	13	329,823	158,830	444,699	8,296	798,134	-2,558
Pacific Interstate Offshore Co.	–	–	–	–	–	–	–	15,783	–	12,014	–	42,448	673
Pacific Interstate Transmission Co.	351	–	–	351	2	–	2	72,031	–	67,824	5,279	252,370	865
Pacific Offshore Pipeline Co.	–	–	–	–	–	–	–	10,445	–	157,848	4,998	69,320	3,802
Paiute Pipeline Co.	768	–	–	768	4	–	4	7,522	31,333	59,876	3,213	37,637	3,277
Panhandle Eastern Pipe Line Co.*	6,622	5,723	130	12,475	82	50	112	57,827	723,812	1,500,252	21,381	490,979	10,752
Pelican Interstate Gas Systems	85	–	–	85	–	–	–	–	16,187	11,074	2	582	-673
Penn-Jersey Pipe Line Co.	4	–	–	4	–	–	–	–	570	234	–	44	-1
Penn-York Energy Corp.	–	–	39	39	–	2	2	–	–	60,954	168	36,237	6,291
Pennsylvania & Southern Gas Co.	–	–	–	–	–	–	–	4,397	2,333	26,057	2,577	43,439	-65
Phillips Gas Pipeline Co.	164	–	–	164	–	–	–	9	67,964	48,710	2	2,761	-1,674
Point Arguello Natural Gas Line	28	–	–	28	–	–	–	–	1,611	139,208	11,829	13,489	13,716
Questar Pipeline Co.*	1,689	722	50	2,461	13	28	41	45,354	188,876	424,835	19,221	234,622	22,057
Raton Gas Transmission Co. Inc.	21	–	–	21	–	–	–	1,142	–	535	–	3,293	66
Riverside Pipeline Co. L.P.	–	–	–	–	–	–	–	–	12,042	1,507	87	574	219
Sabine Resources Group	193	–	–	193	3	–	3	–	27,935	52,644	5,263	7,614	-388
Sea Robin Pipeline Co.*	455	10	–	465	2	2	4	–	233,463	255,364	2,449	27,905	4,314
Seagull Interstate Corp.	11	1	–	12	–	–	–	–	16,692	5,288	54	610	-167
South Georgia Natural Gas Co.	847	–	–	847	2	–	2	2,777	28,471	32,774	8,815	24,084	897
Southern Energy Co. (LNG)	–	–	–	–	–	–	–	–	–	155,473	11	10,510	325
Southern Natural Gas Co.*	7,883	112	48	8,043	50	64	114	118,393	433,438	1,452,424	54,586	721,277	73,449
Southwest Gas Storage Co.	–	–	31	31	–	1	1	–	–	69,001	-17	11,195	2,414
Southwest Gas Transmission Co.	–	8	–	8	–	–	–	–	23,272	1,539	–	356	106
Steuben Gas Storage	–	–	14	14	–	1	1	–	–	23,965	23,965	1,006	516
Stingray Pipeline Co.*	276	–	–	276	2	–	2	–	263,912	248,534	254	40,729	14,492
Superior Offshore Pipeline Co.	130	–	–	130	–	–	–	–	55,635	18,331	247	1,897	13
Tarpon Transmission Co.	40	–	–	40	–	–	–	–	15,387	21,094	–	2,597	1,889
T C P Gathering Co.	–	20	–	20	–	–	–	–	1,009	1,163	–	113	-193
Tennessee Gas Pipeline Co.*	14,934	31	33	14,998	70	1	71	64,595	1,633,230	4,125,954	252,262	894,886	-340,330
Texas Eastern Transmission Corp.*	9,640	48	196	8,884	70	10	80	195,960	777,574	3,688,036	84,029	1,434,139	-44,951
Texas Gas Transmission Corp.*	5,886	39	267	8,192	28	8	36	69,928	607,641	1,106,265	52,371	464,938	27,977
Texas Sea Rim Pipeline Inc.	29	–	–	29	–	–	–	–	960	1,558	–	100	-472
Trailblazer Pipeline Co.*	438	–	–	438	–	–	–	–	120,474	268,305	51	33,851	8,401
Transcontinental Gas Pipe Line Corp.*	10,676	74	117	10,867	42	31	73	241,703	1,725,624	3,893,520	237,197	1,134,305	-58,663
Transwestern Pipeline Co.*	4,510	–	–	4,510	61	–	61	27,789	274,401	714,300	12,896	248,895	36,466
Trunkline Gas Co.*	4,218	530	27	4,775	19	8	27	89,785	430,845	1,122,705	15,418	467,225	20,850
Trunkline LNG Co.	–	–	–	–	–	–	–	–	–	500,673	129	54,026	-36,016
U-T Offshore System*	30	–	–	30	–	–	–	–	272,862	61,827	488	4,749	-268
Union Light, Heat & Power Co.	–	–	–	–	–	–	–	10,391	9,578	115,093	11,680	212,316	3,246
United Gas Pipe Line Co.*	7,323	1,920	28	8,271	29	11	40	24,536	539,678	1,144,032	10,497	275,227	-12,030
Valero Interstate Transmission Co.	161	119	–	280	2	2	4	8,284	57,292	11,614	200	17,474	426
Valley Gas Transmission Inc.	–	200	–	200	–	–	–	–	2,779	3,006	14	244	308
Viking Gas Transmission Co.*	548	–	–	549	9	–	9	8,177	129,034	79,617	1,929	70,186	3,821
West Texas Gas Inc.	–	–	–	–	–	–	–	872	–	22,731	1,403	27,783	679
Western Gas Interstate Co.	191	50	–	241	9	–	9	2,805	–	8,678	144	7,152	487
Western Transmission Corp.	–	61	–	61	–	–	–	–	5,274	848	34	524	316
Williams Natural Gas Co.*	5,853	3,779	176	9,808	36	48	88	85,807	293,337	760,169	36,458	408,561	33,189
Williston Basin Interstate Pipeline Co.*	3,175	712	864	4,751	22	7	29	18,571	59,442	217,070	4,315	116,041	1,934
Wyoming Interstate Co. Ltd.*	268	–	–	269	1	–	1	–	128,458	176,547	-2	11,962	6,753
1991 Total–majors (47)	**189,702**	**57,916**	**6,692**	**253,310**	**1,247**	**737**	**1,984**	**3,934,751**	**21,108,602**	**48,852,999**	**3,112,654**	**21,363,516**	**190,560**
1990 Total–majors (48)	**189,872**	**54,083**	**4,279**	**248,334**	**1,392**	**730**	**2,122**	**4,621,987**	**19,888,378**	**47,953,668**	**3,435,258**	**26,062,693**	**2,271,246**
1991 Total–all	**205,385**	**65,616**	**5,862**	**276,863**	**1,361**	**770**	**2,131**	**4,594,747**	**22,220,458**	**54,604,164**	**3,388,235**	**25,419,555**	**277,898**
1990 Total–all	**208,358**	**62,148**	**4,436**	**274,942**	**1,513**	**766**	**2,279**	**5,744,053**	**21,083,151**	**55,267,854**	**3,784,188**	**32,195,898**	**2,877,508**

Source FERC Forms 2 and 2A for major and nonmajor natural-gas pipeline companies. Under criteria established for the 1984 reporting year (OGJ, Nov. 25, 1985, p. 80), major pipeline companies are those whose combined gas sold for resale and gas transported for a fee exceeded 50 bcf at 14.73 psi (60° F.) in each of the 3 previous calendar years. *Major natural-gas pipeline companies as defined above (and in FERC Accounting and Reporting Requirements for Natural Gas Companies, para. 20-011, effective Feb. 2, 1985, beginning with 1984 reporting year).

Fueloil & Oil Heat
with Air Conditioning

ATTACHMENT E

October 8, 1993

Mr. Bill Wickens
Suite 450
1101 15th Street
Washington, DC 20005

Dear Mr. Wickens:

In answer to your question "How much home heating oil is delivered to the end user by the major oil companies (Exxon, Shell , etc.)?" I would have to say the little to none. There may be occasions where a major will deliver directly to an industrial user but these are rare and the gallonage does not add up to much. It is safe to say that more than 95% of the home heating oil is delivered by independent, retail oil dealers.

I hope this satisfactorily answers your question.

Sincerely,

Donald J. Farrell
Vice President

INDUSTRY PUBLICATIONS INC. 389 Passaic Avenue, Fairfield, NJ 07004 • TEL: (201) 227-5151 • FAX: (201) 227-9219

ATTACHMENT F Jobber stations

How Oil Companies Handle

Company	Total Branded Retail Outlets	Number of States Where Gasoline Brand Is Marketed (a)	Branded Service Stations: How Supplied: Supplied Directly	Branded Service Stations: How Supplied: Supplied Through Jobbers and Commissioned Agents	Branded Service Stations: Type of: Lessee/ Dealer-Operated	Branded Service Stations: Type of: Open Dealer	Branded Service Stations: Type of: Salary-Operated
Acme Petroleum Fuel Co.	124	2	120	4	—	—	—
Ada Resources	5	1	40	26	8	35	—
Advanced Oil Co.	22	1	10	12	—	—	10
Agway Petroleum Corp.	180	8	—	—	—	—	—
American Refining Group	8	1	8	0	—	—	8
Amoco Corp.	8,908	30	3,886	5,853	2,537	854	474
Arco	1,835*	5	1,475	160	—	—	—
Arkansas Valley Petroleum	129	2	121	8	2	127	—
Ashland Oil, Inc. (SuperAmerica)	772	15	736	N/A	N/A	N/A	N/A
Aztec Enterprises	16	1	16	—	—	—	—
BP America Inc.	7,244	29	2,143	5,131	1,090	—	1,026
Bagwell Oil Co. Inc.	24	2	—	—	—	—	—
Bedford Valley Petroleum Corp.	38	0	38	—	3	26	9
Best Oil Co.	15	2	12	3	1	1	10
BHP Petroleum Americas (Hawaii) Inc.	26	1	26	—	—	—	26
Bostick Brothers, Inc.	14	1	—	14	—	—	—
Bradley Petroleum, Inc.	64	3	64	—	17	—	47
Bray Terminals, Inc.	26	2	—	26	—	—	—
Brennan Petroleum Corp.	1	1	1	—	—	—	1
Broken Hill Prop./Pacific Resources	26	1	26	—	—	—	26
Browning Oil Co.	30	1	30	—	27	3	—
Buhrmaster Energy Group	9	1	9	—	—	7	—
Dennis K. Burke, Inc.	1	1	1	—	—	—	1
Bursaw Oil Corp.	48	2	48	—	—	—	—
Campbell Oil Co.	90	1	90	—	—	—	—
Carbo Industries	—	—	—	—	—	—	—
Cenex	864	13	831	23	—	807	24
Center Independent Oil Co.	26	1	20	—	3	2	18
Certified Oil Co.	145	3	—	145	4	—	141
Champlain Oil Co.	116	3	116	—	—	—	—
Chevron Corp.	9,804*	31	3,009	6,795	1,883	430	868
Circle K Corp.	2,200	N/A	N/A	N/A	N/A	N/A	N/A
Citgo Petroleum Corp.	11,808	49	18	11,822	1	—	18
Clark Oil & Refining Corp.	873	11	873	N/A	N/A	N/A	N/A
The Coastal Corp.	1,249	36	813	630	0	99	547
The Coen Co.	100	1	—	100	75	25	—
Colonial Oil Industries, Inc.	88	3	88	—	—	—	88
Comet Oil Co.	3	0	—	3	—	—	—
Como Oil of Florida	24	1	—	—	—	—	—
Conoco Inc.	4,229	29	N/A	N/A	N/A	N/A	N/A
Consumers Gasoline Stations, Inc.	89	3	89	—	—	—	89
Crown Central Petroleum Corp.	429	9	429	0	86	—	324
Crystal Flash Petroleum	26	1	26	—	—	—	25
D.S.C. Oil Co.	13	2	13	—	—	—	13
Curtis Parker Oil Co. Inc.	8	1	—	8	—	—	—
Dairy Mart Convenience Stores, Inc.	497	18	—	—	—	—	—
Dalitsis Oil Co.	90	3	90	—	—	22	68
Diamond Shamrock, Inc.	1,968	8	761	1,183	—	—	761
Dickey, Inc.	3	1	3	—	—	—	—
Dixie Oil Co.	67	3	67	—	—	—	67
East Coast Oil Corp.	44	1	44	—	—	—	44
Emro Marketing Co.	1,548	19	1,548	—	—	—	1,548
Englefield Oil Co.	86	2	86	—	—	—	78
Exxon	10,000	57	3,200	6,800	8,400	300	800
Farm & Home Oil Co.	44	2	44	—	—	33	11
Farm Stores	12	1	—	12	—	—	—
Fina, Inc.	2,536	11	116	2,424	3	8	112
Fleeman Inc., dba Pusman	20	1	20	—	—	—	—
Flying J Inc.	96	24	46	—	—	—	45

oduct Distribution — 1992

ion	Branded Service Stations			Branded Jobbers/Commissioned Agents					
	Gasoline Service			Number Selling...				Co	
mission-erated	Full-service only	Self-service only	Self-service/ Full-service	Total	Gasoline only	Fuel oil only	Gasoline/ Fuel oil	Total	Sel oper
—	0	118	8	0	—	—	—	1	
—	10	36	17	13	7	—	6	3	
—	—	22	—	13	13	—	—	—	
—	—	—	—	—	—	—	—	—	
—	—	3	—	0	—	—	—	0	
—	410	7,570	1,828	890	—	—	—	—	
—	—	1,470	—	22	19	1	2	0	
—	9	119	7	2	—	—	2	2	
N/A	N/A	N/A	N/A	23	—	—	—	0	
—	—	14	1	—	—	—	—	1	
—	—	—	—	485	—	—	—	76	
—	—	—	—	0	—	—	—	2	
—	17	18	8	0	—	—	—	0	
—	—	15	—	0	—	—	—	0	
—	—	28	—	0	—	—	—	0	
—	—	14	—	—	—	—	—	2	
—	—	47	17	—	—	—	—	—	
—	—	—	28	0	—	—	—	3	
—	—	1	—	—	—	—	—	—	
—	—	28	—	0	—	—	—	0	
—	3	10	17	0	—	—	—	1	
—	2	—	7	5	1	2	2	5	
—	1	—	—	0	—	—	—	1	
—	4	4	—	—	—	—	—	—	
80	—	80	—	0	—	—	—	4	
—	—	—	—	—	—	—	—	—	
—	20	804	30	—	—	—	—	640	
—	8	12	—	—	—	—	—	—	
38	46	62	0	—	—	—	—	0	
—	—	—	—	—	—	—	—	0	
—	1,233	4,226	2,345	703	—	—	703	946	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/
—	—	—	—	654	—	—	—	0	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/
0	79	547	13	630	554	0	76	0	
—	10	66	30	—	—	—	—	—	
—	1	21	33	—	—	—	—	—	
—	1	3	—	0	—	—	—	0	
—	—	—	—	—	—	—	—	1	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/
—	—	57	2	0	—	—	—	0	
5	—	400	28	0	—	—	—	0	
—	—	24	1	2	—	—	—	3	
—	4	—	9	0	—	—	—	0	
—	2	1	5	3	—	—	3	3	
—	—	—	—	—	—	—	—	—	
—	—	—	—	0	—	—	—	4	
—	80	80	—	—	—	—	—	—	
—	—	—	—	126	—	—	126	2	
—	—	3	1	—	—	—	—	0	
—	47	10	—	0	—	—	—	—	
—	—	—	—	—	—	—	—	0	
—	0	43	1	0	—	—	—	0	
—	7	1,542	—	0	—	—	—	8	
9	—	78	10	—	—	—	—	0	
—	—	—	—	670	—	—	—	—	
—	—	—	—	—	—	—	—	3	
—	3	15	24	0	—	—	—	N/A	
—	—	12	—	N/A	—	—	—	1	
0	0	115	0	260	0	0	260	1	
—	20	—	—	—	—	—	—	0	
—	—	48	—	9	—	—	9	—	

How Oil Companies Handle Pr

Branded Service Stations

Company	Total Branded Retail Outlets	Number of States Where Gasoline Brand Is Marketed (a)	How Supplied: Supplied Directly	How Supplied: Supplied Through Jobbers and Commissioned Agents	How Supplied: Lessee/ Dealer-Operated	Type of Operat: Open Dealer	Type of Operat: Salary-Operated	Operat: Comr Ope
Foster Oil Co.	52	1	52	—	—	31	21	
H.N. Funkhouser & Co.	25	2	—	—	—	—	—	
Gant Oil Co.	26	1	—	—	—	—	—	
General Oil Co.	31	1	31	—	1	—	23	
Getty Petroleum Corp.	2,110	12	1,442	668	979	249	29	
Global Petroleum Corp.	144	10	144	—	—	—	—	
Golub Corp.	16	1	15	—	—	—	16	
Gresham Petroleum Co.	35	1	35	—	12	—	23	
Jack Griffith Petroleum Products	18	1	17	1	—	2	18	
Angus L. Hines, Inc.	66	3	66	—	14	2	48	
Hankey Oil Co., Inc.	39	1	34	6	2	1	31	
Hough Petroleum	55	2	55	—	—	41	—	
Huck's Convenience Stores	105	6	105	—	—	—	105	
Hull Oil Co.	12	1	12	—	—	—	3	
Jacobus Petroleum Products, Inc.	9	1	9	—	9	1	—	
J & J Service, Inc.	3	2	3	—	—	—	—	
Kellett Oil Co.	130	4	130	—	—	120	—	
Kelso Oil Co., Inc. dba Pride Oil	12	1	12	—	10	—	2	
Kent Distributors, Inc.	24	1	24	—	—	—	—	
Kerr-McGee Refining Corp.	1,233	13	51	1,182	—	—	51	
Kimber Petroleum Corp.	80	1	60	—	40	20	20	
Kimbro Oil Co.	70	1	—	—	—	—	—	
Kocolene Oil Corp.	71	4	71	—	—	—	71	
Krause Gentle Corp.	89	2	89	—	—	—	—	
Kwik Shop Inc.	199	8	—	—	—	—	—	
Lakeside Oil Co. Inc.	124	1	124	—	—	124	—	
H.C. Lewis Oil Co.	32	1	32	—	2	21	8	
The Lyden Co.	150	2	150	—	60	30	60	
Manassas Ice & Fuel Co., Inc.	—	—	—	—	—	—	—	
Marathon Oil Co.	2,290	11	456	1,834	306	150	—	
Martin Oil Marketing, Ltd.	42	2	42	—	—	—	42	
Mauger & Co.	38	1	—	38	—	—	—	
McCall Oil Co.	1	1	1	—	—	—	1	
McLeiser Oil, Inc.	40	1	—	40	—	—	—	
MFA Oil Co.	260	1	250	—	26	180	65	
Mid-Missouri Oil Co.	15	1	15	—	—	8	7	
Midwest Petroleum Co.	60	2	60	—	20	—	40	
Miller Enterprises Inc.	82	2	82	—	22	20	26	
Mini-Mart Inc.	107	8	77	30	—	—	77	
Mobil Oil Co.	8,577	22	4,246	4,331	2,490	1,079	677	
Munro Petroleum & Terminal Corp.	35	1	26	—	9	3	20	
Murphy Oil USA, Inc.	647	14	—	—	—	—	—	
National Convenience Stores, Inc.	618	3	—	—	—	—	—	
National Oil & Gas Inc.	110	2	110	—	110	—	—	
Neal, Inc.	24	1	24	—	—	—	24	
Nelle Oil Co.	22	2	22	—	—	—	22	
NOCO Energy Corp.	61	1	61	—	—	—	61	
Northville Industries Corp.	88	2	88	—	6	50	23	
Pal Oil Co., Inc.	88	1	56	—	2	47	7	
Parker Oil Co., Inc.	76	3	76	—	76	—	—	
Pekin Energy Co.	—	—	—	—	—	—	—	
Pennzoil Products Co.	993	8	N/A	N/A	N/A	N/A	N/A	
Petro USA (Petroleum Sales & Service)	32	1	—	32	—	—	—	
Petroleum Marketers, Inc.	147	3	147	—	94	—	82	
Petroleum Products Corp.	82	3	8	74	—	—	8	
Phillips 66 Co.	7,171	32	—	—	—	—	—	

;t Distribution (Cont.)

Branded Service Stations			Branded Jobbers/Commissioned Agents				Bulk
Gasoline Service				Number Selling—			Company
Full-service only	Self-service only	Self-service/ Full-service	Total	Gasoline only	Fuel oil only	Gasoline/ Fuel oil	Total	Salary-operated
13	36	1	1	—	—	1	5	5
—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—
1	25	1	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—
2	13	—	18	—	—	—	—	—
10	25	—	—	—	—	—	—	4
—	17	1	—	—	—	—	—	—
1	86	—	—	—	—	—	4	4
—	32	3	0	—	—	—	1	1
65	—	—	—	—	—	—	—	—
—	106	—	—	—	—	—	—	—
—	11	1	0	—	—	—	0	—
—	9	—	0	—	—	—	—	—
—	—	3	—	—	—	—	—	—
—	—	130	20	—	—	20	—	—
—	12	—	—	—	—	—	0	—
—	24	—	0	—	—	—	—	—
74	740	418	348	23	31	294	170	—
80	—	—	0	—	—	1	0	—
—	40	39	1	—	—	—	—	—
—	4	67	0	—	—	—	0	—
—	—	—	0	—	—	—	0	—
—	186	—	—	—	—	—	—	—
21	109	—	0	—	—	—	—	—
0	10	22	0	—	—	—	1	1
9	56	92	—	—	—	—	9	3
—	—	—	—	—	—	—	3	2
118	329	1,706	282	—	—	282	314	—
—	42	—	0	—	—	—	0	—
—	36	—	—	—	—	—	—	—
1	—	—	—	—	—	—	2	2
—	36	4	2	—	—	2	0	2
60	100	100	7	—	—	—	120	—
—	13	2	0	—	—	—	0	—
—	66	4	0	—	—	—	0	—
—	82	—	0	—	—	—	1	1
—	107	—	3	1	—	2	0	0
N/A	N/A	N/A	1,123	0	730	418	0	0
—	31	4	—	—	—	—	—	—
—	547	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—
—	106	8	18	—	—	18	9	—
—	24	—	—	—	—	—	—	—
—	22	—	0	—	—	0	0	—
—	45	18	—	—	—	—	—	—
3	82	10	0	—	—	—	0	—
—	—	—	—	—	—	—	—	—
16	98	20	0	—	—	—	9	9
—	79	8	0	—	—	—	9	8
—	—	—	—	—	—	—	—	—
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
28	8	—	—	—	—	—	—	—
—	147	—	0	—	—	—	8	8
—	—	82	14	—	—	14	4	4
—	—	—	1,014	—	—	—	—	—

t—National Petroleum News

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How Oil Companies Handle

Branded Service Stations

Company	Total Branded Retail Outlets	Number of States Where Gasoline Brand Is Marketed (a)	How Supplied: Supplied Directly	How Supplied: Supplied Through Jobbers and Commissioned Agents	Type of: Lessee/ Dealer-Operated	Type of: Open Dealer	Type of: Salary-Operated
Pilase Motor Fuels, Inc.	16	2	16	—	10	1	5
Pilot Corp.	97	26	97	—	—	—	97
Prime Lube	1	1	—	—	—	—	—
Private Brand Services, Inc.	1	1	1	—	1	—	—
Quality Oil Co.	115	1	115	—	75	—	40
QuikTrip Corp.	299	6	299	—	—	—	299
Redwood Oil Co., Inc.	90	1	90	1	3	72	15
Reinhardt Corp.	8	1	8	—	4	2	2
Roach Oil Co.	10	2	10	—	2	1	7
Robinson Oil Co. Inc.	23	1	23	—	—	—	23
Sahara Oil Co., Inc.	27	1	—	27	—	12	12
Save-X USA, Inc.	10	1	10	—	—	—	10
SCASCO	32	1	32	—	17	—	6
Schaeffer Oil, Inc.	4	1	—	6	—	—	—
Shay Oil Co., Inc.	18	1	18	0	—	18	—
Shelby Petroleum Corp.	20	2	20	—	—	—	20
Shell Oil Co.	8,536	39	4,190	4,346	8,708	257	225
Shipley Oil Co.	28	1	28	—	—	7	21
Shotmeyer Bros. Petroleum Corp.	42	1	42	—	12	—	—
The SIGO Co.	111	3	111	—	12	27	28
Sinclair Oil Corp.	2,725	23	245	2,480	80	10	180
Sing Oil Co.	39	4	89	—	—	—	87
R.L. Smaltz Oil Co., Inc.	17	1	17	—	—	7	10
SOS Oil Corp.	48	1	48	—	1	47	—
Southern Counties Oil Co.	11	1	11	—	1	—	10
Star Enterprise	9,032	27	1,816	7,216	728	404	834
Stewart Petroleum Co.	66	6	66	—	—	—	66
Stevens Oil Co.	47	1	—	—	—	—	—
Sugarcreek Corp.	205	2	205	—	60	40	105
Sun Co., Inc.	6,389	N/A	1,845	3,744	N/A	N/A	N/A
A. Tarricone (ATI)	50	2	47	—	36	3	4
Taylor Oil Co.	60	2	60	—	—	—	—
Tesoro Petroleum	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Texaco Inc.	4,872	24	1,256	2,718	395	848	444
Texas Star Oil Co.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Thornhill Oil Co., Inc.	29	1	—	29	—	—	—
Tooley Oil Co.	8	1	8	—	4	8	—
Total Petroleum, Inc.	2,348	20	909	1,740	—	—	609
Town Pump Inc. & Affiliates	80	1	80	—	—	—	40
Travelers Petroleum, Inc.	18	1	18	—	—	—	18
Truax Harris Energy Co.	54	2	54	—	2	12	4
Ultramar	400	4	286	116	16	74	195
Ultra Power Corp.	13	1	12	—	1	8	5
United Refining Co.	939	3	337	1	—	—	338
Unocal Corp. (h)	1,484	7	1,494	—	1,198	269	27
The Uno-Ven Co.	3,004	18	—	3,004	—	—	—
Vista Marketing Group Ltd.	17	4	17	—	—	—	17
Wake Up Oil Co., Inc.	38	1	38	—	—	1	37
Warrebuco, Inc.	108	5	108	—	2	—	104
Warren Equities, Inc.	270	8	270	—	62	208	—
A.T. Williams Oil Co.	110	2	—	—	—	—	—
J.H. Williams Oil Co., Inc.	84	1	84	0	77	—	7
Woolen Oil Co.	54	3	54	—	2	29	22

(*) Excludes airport & marine outlets, new car dealerships & military exchanges.
(a) Western marketing only.

oduct Distribution (Cont.)

Jon.	Branded Service Stations — Gasoline Service			Branded Jobbers/Commissioned Agents — Number Selling...				Co	
mission-erated	Full-service only	Self-service only	Self-service/ Full-service	Total	Gasoline only	Fuel oil only	Gasoline/ Fuel oil	Total	Sal ope
—	—	7	9	0	—	—	—	1	
—	—	87	—	0	—	—	—	0	
—	—	—	—	1	—	—	—	1	
—	—	1	—	0	—	—	—	0	
—	118	—	—	0	—	—	—	0	
—	—	299	—	0	—	—	—	0	
0	—	50	40	2	—	—	2	7	
—	3	5	—	—	—	—	—	3	
—	1	8	4	—	—	—	—	1	
—	—	23	—	0	—	—	—	0	
3	1	23	3	3	—	—	3	2	
—	—	10	—	0	—	—	—	0	
10	14	19	2	2	—	2	—	4	
—	—	4	—	0	—	—	—	1	
—	—	18	—	0	—	—	—	1	
—	20	—	—	N/A	—	—	—	N/A	
—	230	1,414	2,548	349	N/A	N/A	N/A	—	
—	1	27	—	0	—	—	—	—	
30	42	—	—	42	2	—	—	0	
46	35	78	—	0	—	—	—	0	
28	—	—	—	502	—	—	—	N/A	
2	—	—	—	—	—	—	—	—	
—	—	—	—	1	—	—	1	1	
—	28	8	15	—	—	—	—	2	
—	—	11	—	4	—	—	4	4	
148	933	825	566	467	355	1	111	9	
—	—	88	—	0	—	—	—	0	
—	18	28	—	—	—	—	—	1	
—	0	205	0	—	—	—	—	14	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N
7	20	2	28	67	2	—	—	8	
60	—	60	—	0	—	—	—	0	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N
72	368	3,443	1,240	364	—	—	364	0	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N
—	1	26	2	—	—	—	—	4	
—	—	8	—	0	—	—	—	0	
10	500	1,305	544	348	—	—	—	1	
66	—	66	—	—	—	—	—	—	
—	—	18	—	0	—	—	—	0	
36	—	54	—	36	28	—	8	0	
—	—	380	20	18	18	—	—	0	
—	—	—	—	—	—	—	—	—	
—	148	193	—	0	—	—	—	0	
—	137	380	868	96	0	96	12	96	
—	—	—	—	201	—	—	201	4	
17	—	17	—	0	—	—	—	1	
—	3	10	25	0	—	-	—	0	
—	—	49	57	—	—	—	—	N/A	
—	70	182	8	0	—	—	—	2	
—	—	—	—	—	—	—	—	—	
0	35	36	21	0	—	—	—	0	
1	2	91	1	—	—	—	—	—	

(b) May also incl

ATTACHMENT G

The Washington Times

★ MONDAY, OCTOBER 11, 1993 / PAGE A3

AP

Tanker troubles

The OMI Charger was listing hard to port yesterday after being ripped by two explosions near Galveston, Texas. Three persons were believed killed aboard the Charger, and officials feared a spill of 365,000 gallons of fuel.

INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

Chairman
Charles A. Hinton, Jr.
W.B. Hinton Drilling

Vice Chairman
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STATEMENT

ON

MINERALS MANAGEMENT SERVICE'S PROPOSED RULES

FOR

CERTIFICATION OF FINANCIAL RESPONSIBILITY

UNDER

THE OIL POLLUTION ACT OF 1990

Submitted by the

INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

Subcommittee on Coast Guard and Navigation

and

Subcommittee on Oceanography, Gulf of Mexico and the Outer Continental Shelf

United States House of Representatives

Washington, D.C.

October 26, 1993

The International Association of Drilling Contractors (IADC) is pleased to have the opportunity to provide testimony on the matter of Certification of Financial Responsibility under the Oil Pollution Act of 1990. The IADC is a trade association representing oil and gas drilling contractors operating worldwide, both onshore and offshore, and includes virtually all contractors operating offshore in U.S. waters. Our members' traditional "offshore" operations will be impacted directly by Certification of Financial Responsibility (COFR) implementing regulations, which will be issued and administered by the Coast Guard, and, it appears, all of our members will be at least indirectly impacted by the rules which will be issued and administered by the Minerals Management Service.

The Minerals Management Service's rulemaking on Oil Spill Financial Responsibility for Offshore Facilities serves to highlight the continuing problem faced by our industry, and others, which stems from the apparent refusal of the insurance industry to issue financial responsibility guarantees in a form that will be acceptable to the Coast Guard, and (presumably) the Minerals Management Service. As the Coast Guard has discussed this problem in detail in the Preliminary Regulatory Impact Analysis that it prepared for its implementing regulations, we will not expound upon it, other than to state that our members' insurers continue advise them that their position remains unchanged.

In earlier testimony before the Subcommittee on Coast Guard and Navigation, we had identified the problems that would be posed for our members should traditional insurance not be acceptable to the Coast Guard to demonstrate financial responsibility. One particular challenge to our members was the financial tests which were proposed as criteria for self-insurance. These tests would particularly penalize those of our members who have attempted to compete in the global marketplace as they could not use assets located outside of the United States in demonstrating financial responsibility, yet they would be required to subtract worldwide liabilities from their U.S. asset-base in the demonstration.

While the Minerals Management Service has not proposed specific qualification requirements for companies to self-insure, we must realistically consider that its criteria, for consistent application of the statute, must be similar to the Coast Guard's. We believe this would have a significant adverse impact on oil and gas companies nationwide and, as a result, could be potentially devastating to our members.

Many of our members' clients, particularly the smaller independent operators who make up an increasing portion of the domestic market for our members' services, have claimed that the requirement for establishing $150 million in financial responsibility will adversely impact their businesses. We have no means of verifying the validity of these claims, but we would direct your attention to a listing of the top 300 publicly-traded oil and gas producing companies in the U.S. which appeared in the 20 September 1993 issue of *Oil and Gas Journal*. Of these 300 companies, only the top 89 (26%) are listed as having total assets in excess of $150 million. One of the Coast Guard's proposed criteria for self-insurers requires that liabilities be subtracted from total assets. An approximation of this value is represented by a company's stockholder equity. In this regard, we would note that the same *Oil and Gas Journal* article indicates only 61 (20%) of these top 300 companies are listed as having stockholder equity in excess of $150 million. If one considers that most of these 61 larger companies operate internationally and are reporting assets located outside of the United States, the number which could qualify as self-insurers using the Coast Guard's proposed criteria could be quite low. The irony is that many of these companies are insured well in excess of the $150 million, yet this insurance remains unacceptable for demonstrating financial responsibility.

We would also voice our concern over the population of facilities which the Minerals Management Service has apparently determined to be "offshore facilities" for the purposes of Title I of the Act. Clearly, a host of "facilities" that had historically never been considered such, will not only be faced with increased liability under the Act, but many, located hundreds of miles away from any waterway which has ever been navigated by a vessel, will be faced with demonstrating financial responsibility under the Minerals Management Service's regulations. Some would argue that certain provisions of the Act are not workable; nonetheless, absent amendment of the Act, if they are to issue implementing regulations, the Minerals Management Service and the Coast Guard must develop interpretations of the Act's requirements which are both reasonable and workable. Some areas where we foresee difficulty include:

(1) The interpretation of the definition of "facility" in determining which "offshore facilities" may be subject to the requirement to certify financial responsibility. "Any . . . equipment, or device (other than a vessel) which is used for . . . exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil (and) includes any motor vehicle, rolling stock, or pipeline" (33 U.S.C. 2701(9)) is so expansive as to be unworkable. As there is no *de minimis* limit it could be considered to include consumer packages of motor oil or cooking oil.

(2) The definition of "mobile offshore drilling unit." 33 U.S.C. 2701(18) defines "mobile offshore drilling unit" as "a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility." If a very broad interpretation of "facility" is adopted, virtually any vessel could be considered a mobile offshore drilling unit.

(3) The interpretation of "in, on or under" the navigable waters of the United States used in defining "offshore facility." (33 U.S.C. 2701(22)) The Environmental Protection Agency and Army Corps of Engineers have so broadened their regulatory definition of "navigable waters" (*e.g.*, 40 CFR 110.1) under the Clean Water Act that it includes virtually any surface water which is not part of a waste treatment system. If the Minerals Management Service adopts a similar interpretation, thousands of facilities, public and private nationwide, would be subject to their rules. These "offshore-facilities" are far removed from the "offshore facilities" which were subject to COFR under the Outer Continental Shelf Lands Act. Was such an expansion of the Federal regulatory program envisioned? We think not. Certainly, the Minerals Management Service was not provided with staff or monies for such an expansive program.

(4) The interpretation of what constitutes a "discharge . . . on or above the surface of the water" in the division of liability for mobile offshore drilling units (MODUs). (33 U.S.C. 2704(b)(1)) This provision was intended to preserve the traditional division of liability between the operator and the drilling contractor, assigning responsibility and liability for discharges of oil and drilling fluids from the well bore and reservoir to the operator and preserving the responsibility and liability for above-surface discharges of fuel oil, lubricants, etc. from the MODU with the MODU owner. Unfortunately, oil floats, with the result that it has been proffered that <u>any</u> discharge, regardless of its source or circumstances, would be a discharge on or above the surface of the water.

(5) The lack of provisions for adjustment of the limit of liability (and hence the demonstration of financial responsibility) for "offshore facilities." Provision is made for adjusting, by regulation, the limit of liability for onshore facilities within the range of $8 million to $350 million. However, no similar provision is made for offshore facilities even though they comprise as broad a range of type and potential risk as do onshore facilities. Accordingly, the same demonstration ($150 million) must be made for a 50 gallon gasoline storage tank on a dock as would be required for a major "offshore" oil pipeline. Owners of small facilities are forced to insure far above any reasonable expectation of risk and in doing so incur unnecessary costs, and self-insurance at this level becomes an impossibility.

(6) Identification of the "responsible party" for purposes of demonstrating financial responsibility for "offshore facilities." 33 U.S.C. 2716 requires each responsible party for on offshore facility to demonstrate financial responsibility. 33 U.S.C. 2701(32) defines "responsible party" for offshore facilities, but does so in terms generally associated with oil and gas production operations. Thus, it is not well suited for determining the responsible party for the host of other facilities which may be included within the definition of "offshore facility" such as motor vehicles or rolling stock which may be temporarily located "in, on or under" the navigable waters.

We would close our statement much as we did two years ago and ask that the Congress, the Coast Guard and the Minerals Management Service reconcile what is necessary to return insurance as a means of demonstrating financial responsibility and further, to examine and adjust the limits of liability under the Act to levels that appropriately and reasonably account for the relative risks posed by the various classes and categories of vessels and facilities subject to the Act.

STATEMENT OF ROBERT J. McMANUS, ESQ.

ON BEHALF OF

THE TEXAS SHRIMP ASSOCIATION

BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY,

HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

October 26, 1993

Good afternoon, Mr. Chairman. My name is Robert McManus, Washington counsel for the Texas Shrimp Association (TSA), a trade association of 370 members, operating over 700 shrimp trawlers in the Gulf of Mexico.

I am appearing today to deliver an unabashedly negative message: We oppose any interpretation of the Oil Pollution Act of 1990 (Public Law 101-380, Aug. 18, 1990, hereinafter "OPA 90") that would have the preposterous effect of requiring our members to obtain evidence of financial responsibility in the amount of $150 million. We ask, Mr. Chairman, that this committee exercise its oversight capacity with respect to OPA 90 to ensure that current rulemaking proceedings by the Minerals Management Service (MMS) of the Interior Department do not have that result; or, if they do, that the committee promptly sponsor clarifying legislation conforming the requirements of OPA 90 to Congress's actual expectations when it passed this legislation, largely in response to the wreck of the Exxon Valdez.

As this committee is aware, Mr. Chairman, MMS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register of August 25, 1993, eliciting preliminary comments on the scope and shape of rules called for by section 1016(c) of OPA 90, 33 U.S.C. §2716(c). On at least one score, however, the ANPR left no doubt: MMS now considers thousands of small coastal oil handling and storage facilities to be "offshore facilities" for purposes of OPA 90, a legal position with profound textual and practical problems, summarized below. Subsequently extended, the deadline for comments in response to the ANPR is now December 24, 1993. We hope that, by then, the MMS will come to understand the muddle its ANPR has created.

The problem arises, Mr. Chairman, in connection with the implementation of section 1016(c)(1), 33 C.F.R §2716(c)(1), which provides in relevant part:

> "Except as provided in paragraph (2) [dealing with "deepwater ports"], each **responsible party** with respect to an **offshore facility** shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party would be entitled to limit liability under that section. . . ." (Emphasis added.)

The problem in implementing this mandate, Mr. Chairman, arises because of the definition of "offshore facility." According to the definitions provision of OPA 90, section 1001(22), 33 U.S.C. 2701(22):

> "'offshore facility' means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel."

Central to this definition, of course, is the phrase "navigable waters," defined in turn by section 1001(21), 33 U.S.C. 2701(21) as ". . .the waters of the United States, including the territorial sea." We understand, Mr. Chairman, that this phrase was introduced into the Clean Water Act by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500, Oct. 18, 1972) to ensure that federal jurisdiction over polluting discharges into our nation's waterways would no longer be constrained by irrelevant notions of navigability. We also understand that Congress intended thereby to extend the jurisdiction of the federal government over water pollution to the maximum extent permissible under the Constitution.

Unfortunately, Mr. Chairman, this generally sensible 1972

policy decision has led to an unmanageable 1993 result. As we are now informed by the MMS, section 1016(c) has had the effect of expanding that Agency's turf immeasurably: no longer would it require evidence of financial responsibility only from OCS operations, as now required under 30 C.F.R. Part 250; coverage would extend to all those whose facilities are in, on, or under "navigable waters," including streams, lakes and wetlands. In addition, the MMS has now broadly construed the statute to cover many marinas, and storage tanks located in wetlands. (In light of the appearance of the term "navigable waters" in the definition of "offshore facility," it seems that the MMS would also construe the statute to render most oil pipelines "offshore facilities," since most oil pipelines must underlie wetlands for at least some portion of their length.)

Mr. Chairman, we understand the textual analysis that underlies the ANPR, but we strongly disagree that it adopts the only legally defensible interpretation of OPA 90, or even the best one. Not only is it inconsistent with the common understanding of the term "offshore facility," but it is also at odds with the definition of the other operative term in section 1016(c), a term to which the ANPR fails to allude. I refer to the definition of "responsible party" in section 1001(32), 33 U.S.C. §2701(32). That provision is also key to the implementation of section 1016(c), since only a "responsible party" will have a legal obligation to "establish and maintain evidence of financial responsibility."

The definition of "responsible party" has five component subparagraphs, the first three relating respectively to the parties responsible for "vessels," for "onshore facilities," and for "offshore facilities." The first two are cast in terms of persons "owning or operating" the facilities. Significantly, however, the third component is not:

> "(C) **Offshore Facilities.**--In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 [citation omitted]), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law, or the Outer Continental Shelf Lands Act [citation omitted] for the area in which the facility is located (if the holder is a different person than the lessee or permittee) . . . ."

This language, Mr. Chairman, is clearly the language of oil and gas lease activities under the Outer Continental Shelf Lands Act or the Submerged Lands Act, and not the language applicable to the thousands of small businessmen who own or operate fuel storage tanks, marinas, or other small-scale facilities in coastal areas. As a technical legal matter, therefore, it is hard to see how the MMS would be able to enforce its new requirement--assuming it has the resources to oversee the implementation of that requirement by

the many thousands of entities that would now be subject to it. But more important, Mr. Chairman, it is difficult to see how the MMS can read these provisions as a whole and conclude that the thousands of entities now found to be "offshore facilities" must obtain insurance in amounts just barely available, if at all, to major oil producers and shippers.

We do not believe the Administration is really in any such legal bind. We believe that if the statutory material set forth above is read together and as a coherent whole--as it must be--the term "offshore facility" has no application to many installations that are, in common parlance, onshore facilities. In TSA's view, Mr. Chairman, applying the requirement of section 1016(c) only to those facilities which have a "responsible party" as defined in section 1001(32)(C) would make a great deal of sense. This result would be both legally and politically acceptable.

Mr. Chairman, I want to emphasize that TSA's position on this arcane statutory detail would not let our members off the hook for implementing OPA 90 as we believe it was actually intended by Congress. Facilities that might escape the MMS's forthcoming rule on the grounds that they are no longer considered "offshore facilities" would have to be classified as "onshore facilities" instead. Onshore facilities are covered by OPA 90, of course, and by the strict liability provisions of section 1002(a), 33 U.S.C.

§2702(a), and the near-astronomical liability limits of section 1004(a), 33 U.S.C. §2704(a)--in the case of an onshore facility, $350 million. In addition, onshore facilities are generally subject to the oil spill contingency planning requirements of section 311(j) of the Clean Water Act, 33 U.S.C. §1321(j), established by the Coast Guard with respect to transportation-related facilities, and set forth at 33 C.F.R. Part 154. Our position would not change that. It would merely avoid the confusion and frustration that will predictably result if thousands of small establishments serving our fishing industry are told to obtain third-party insurance in the same voluptuous amount required of a production platform in the Santa Barbara Channel.

In conclusion, Mr. Chairman, we understand how the MMS arrived at the position it announced this past August. But we hope that the passage of time and the digestion of thoughtful comment will lead it in the end to administer section 1016(c) in a manner that gives effect to congressional intent while producing a workable result.

NATIONAL MARINE MANUFACTURERS ASSOCIATION

October 19, 1993

Lynn Herdt
Chief of External Affairs
Dept. of the Interior
Mineral Management Service
1819 "C" Street, NW
Mailstop 4013
Washington, DC 20240

Dear Ms. Herdt:

The National Marine Manufacturers Association, representing nearly 1,500 manufacturers of recreational boats and associated equipment nationwide, wishes to add its voice to the chorus of grave concern over your agency's regulatory proposal to require all marinas with gas docks on navigable waters to carry $150 million in liability insurance against oil spills.

According to our marina database, more than two-thirds of such facilities in the United States today are small "mom and pop" operations with fewer than 100 slips. If they have a fuel dock, typically they pump no more than 60,000 to 70,000 gallons a year. We do not believe this is the type of facility contemplated under the definition of "offshore facility" in the Oil Pollution Act of 1990, even though marinas are covered by strict construction.

The fact is, recreational boaters cruising U.S. waters today are already suffering a scarcity of fuel docks at marinas. Largely this is a consequence of 1988 EPA underground fuel tank storage compartment regulations which require $1 million insurance protection against leakage. Small business owners who cannot afford that kind of coverage on their slim profit margin have had no choice but to discontinue fuel service.

To now require marinas that still manage to have fuel docks to pay an additional premium for insurance against oil spill damage and clean up could well force them to give up a vital service, and that could have serious safety consequences. Boaters with no convenient access to fuel would have little choice but to carry portable containers on board putting them at serious risk of fire and explosion. This would be very counterproductive indeed for an industry which has all but eradicated accidents as a result of spilled fuel or vapor.

NMMA Washington Harbour, 3050 K Street, N.W., Suite 145
Washington, D.C. 20007 • 202/944-4980

Ideally, for the salvation of the marina industry we would like to see an exemption from the Service's proposed regulation. If total exemption is not possible, at the least we ask that you give serious consideration to a sliding scale of insurance according to the amount of fuel pumped. In that way coverage for the marina industry will be commensurate with its potential for accidental environmental damage from oil spills.

Let us assure you that our industry is keenly aware of the necessity to preserve and protect water quality. Clean water is essential to a quality boating experience. It is good for business.

Sincerely,

Ron Stone

Ron Stone
Director of Boating Facilities
Development Department

NMMA Marina Directory
September, 1993
Slip Size (All Regions)

Slip Size	*1992 Number of Facilities*	*1993 Number of Facilities*	*Percent of Total 1993 Facilities*
Under 50	2,709	2,813	44.1%
50 to 99	1,451	1,509	23.7%
100 to 199	1,099	1,175	18.4%
200 to 299	431	454	7.1%
300 to 399	159	166	2.6%
400 to 699	182	180	2.8%
700 to 999	45	45	0.7%
1,000 or More	29	30	0.5%
Total	**6,105**	**6,372**	**100.0%**

Less than 7 percent of the facilities have 300 or more slips. The south Atlantic region has a disproportionately large number of facilities with less than 50 slips. While the Pacific region has the greatest number of facilities with more than 1,000 slips.

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TYPES OF BOATING ACCIDENTS - 1992

	VESSELS INVOLVED	FATALITIES
TOTALS	**8,206**	**816**
Grounding	342	16
Capsizing	458	248
Swamping/Flooding	323	82
Sinking	202	30
Fire/Explosion (fuel)	194	1
Fire/Explosion (other)	101	3
Collision with another vessel	4,353	79
Collision with fixed object	841	74
Collision with floating object	211	5
Fallen Skier	299	9
Falls overboard	433	212
Falls within boat	167	3
Struck by boat or propeller	116	8
Other	129	18
Unknown	37	28

Published statistics on the types of boating accidents refer only to the first event that occurred in the accident sequence. Some accidents involve more than one event. A grounding followed by a sinking is counted only as a grounding, even though the sinking may have led directly to a fatality. The Coast Guard collects and maintains all of the sequential event data in a computer database which is available upon request. The table below reflects all events coded for each reported accident in 1992. Since there could be one, two or three events coded per accident, the numbers in the "Vessels Involved" and "Fatalities" columns are higher than those reflected in the table above. For example, there were 116 vessels involved in struck by boat or propeller accidents where the strike was the first accident event. However, if you add those cases where a boat capsized, a passenger fell overboard, or other event preceded the boat or propeller strike, the total number of events for vessels involved in struck by boat or propeller accidents is 347.

COMPILATION OF ALL EVENTS THAT OCCURRED IN BOATING ACCIDENT SEQUENCES - 1992

	VESSELS INVOLVED	FATALITIES
Grounding	411	20
Capsizing	609	310
Swamping/Flooding	382	88
Sinking	498	85
Fire/Explosion (fuel)	196	1
Fire/Explosion (other)	106	3
Collision with another vessel	4,385	79
Collision with fixed object	870	75
Collision with floating object	221	5
Fallen Skier	323	11
Falls overboard	1,289	591
Falls within boat	253	6
Struck by boat or propeller	347	46

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 17 1993

Honorable Gerry Studds
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find additional information requested at the hearing before the Merchant Marine and Fisheries Committee, Subcommittee on Coast Guard and Navigation and the Subcommittee on Oceanography, Gulf of Mexico and OCS on October 26, 1993, regarding Section 1016(c) of the Oil Pollution Act.

The enclosed information has been prepared for insertion in the record at the points indicated thereon. Specifically, information should be inserted on page 21, line 458; page 70, line 1546; and page 82, line 1857.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

(s/d) Daniel Consenstein

Daniel Consenstein
Deputy Director of Legislative
and Intergovernmental Affairs

Enclosures

cc: Honorable Jack Fields
Honorable Billy Tauzin
Honorable Howard Coble
Honorable Solomon Ortiz
Honorable Curt Weldon

INSERT 1

On page 21, line 458, insert the following:

The Minerals Management Service has received 70 comments to date in response to the August 25, 1993, Advance Notice of Proposed Rulemaking (copies attached). The comment period will close on December 24, 1993, and we expect to receive numerous additional comments by that date. We will be glad to forward to the Committee any additional comments we receive in order to fully supplement the record.

ADMINISTRATIVE RECORD
COMMENTS RECEIVED IN RESPONSE TO FEDERAL REGISTER NOTICE

SUBJECT: ANPR 30 CFR Part 253: Oil Spill Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

COMMENT PERIOD CLOSES: October 25, 1993 (Comment Period has been extended to December 24, 1993)

Letter No.	*Name of Commenter*	*Date of Letter*	*Date Postmarked*	*Date Received*
1	Irven F. Palmer	8/26/93	8/26/93	8/30/93
2	Raymond N. Perry, Globe Marine Drilling Company	9/3/93	9/3/93	9/8/93
3	Curtis L. Johnson, Fuelco	9/3/93	9/3/93	9/8/93
4	Kenny Wiens, Central Feeders Inc.	9/10/93	FAX	9/10/93
5	R.P. Sanders Jr., R S E, Inc	9/8/93	9/9/93	9/13/93
6	Israel Katz, Seaboard Industries Inc.	9/7/93	9/8/93	9/14/93
7	Larry Innis, Marine Operators Association of America	9/2/93		9/7/93
8	Ronald L. Jones, American Petroleum Institute	9/13/93	Via Messenger	9/15/93
9	John N. Ehrman, Midcon Offshore Inc.	9/15/93	9/14/93	9/17/93
10	Jonathan S. Soules, Enserch Corporation	9/17/93	9/17/93	9/20/93

Letter No.	Name of Commenter	Date of Letter	Date Postmarked	Date Received
11	Robert B. Stewart, National Ocean Industries Inc.	9/17/93	9/17/93	9/20/93
12	Mark K. Seifert, Independent Petroleum Association of America	9/21/93	FAX	9/21/93
13	Jerry Croft, Petroleum Co.	9/15/93	9/16/93	9/21/93
14	Mark K. Seifert, Independent Petroleum Association of America	9/21/93	9/21/93	9/24/93
15	R.J. Savoy, Texaco Exploration and Production Inc. (Offshore Division)	9/21/93	9/21/93	9/24/93
16	R.D. Biddle, Texaco Exploration and Production Inc. (Onshore Division)	9/21/93	9/21/93	9/24/93
17	John W. Joeckel, Ashland Petroleum Company	9/20/93	9/20/93	9/24/93
18	Gregory L. Grigley	9/22/93	9/23/93	9/27/93
19	Gene Douglas, Hvide Shipping	9/24/93	9/24/93	9/27/93
20	Jay S. Etheridge, Conoco	9/20/93	9/21/93	9/28/93/
21	Samuel Y. Fisher, Hamilton Oil Company	9/24/93	9/24/93	9/28/93
22	Gary R. Hollowell, Cantu Lease, Inc.	9/23/93	9/27/93	9/30/93
23	Georgia Raga, Navaho Refining Company	9/30/93	9/30/93	10/4/93
24	Peter K. Velez, Shell Offshore Inc.	9/27/93	9/30/93	10/5/93

Letter No.	Name of Commenter	Date of Letter	Date Postmarked	Date Received
25	Clifford J. Harvison, National Tank Truck Carriers Inc.	10/1/93	10/4/93	10/5/93
26	Cindy Hereford, Tejas Gas Corp.	10/1/93	10/1/93	10/5/93
27	R. Michael Lyons, Louisiana Mid-Continent Oil and Gas Association	9/27/93	9/27/93	10/6/93
28	Willard E. Rorvig, BHP Petroleum (AMERICAS) Inc	9/27/93	9/28/93	10/6/93
29	V. Ed Butler, Echo Production, Inc.	10/1/93	10/1/93	10/7/93
30	John Shively, Nana Development Corporation	10/1/93	10/4/93	10/7/93
31	H. T. Hunnewell, Twin Montana Inc.	10/1/93	10/4/93	10/12/93
32	Joseph F. Mueller, Marjo Oil Company	10/7/93	10/7/93	10/13/93
33	Alexander W. Vietor, Willis Corron	10/11/93	10/11/93	10/13/93
34	William M. Sutcliffe, Underwriters Management Associates, Inc.	10/11/93	10/11/93	10/14/93
35	Thomas H. McCasland III, Mack Oil Co.	10/11/93	10/11/93	10/15/93
36	Dhar Carman, Statex Petroleum Inc.	10/11/93	10/12/93	10/15/93
37	Harry Spooner, Spooner Energy Inc.	10/11/93	10/12/93	10/15/93
38	Gordon E. Demerson, Mack Energy Co.	10/11/93	10/11/92	10/15/93

Letter No.	Name of Commenter	Date of Letter	Date Postmarked	Date Received
39	Wilfred W. Baumann, Simmons Santa Barbara	10/12/93	10/12/93	10/15/93
40	Eric D. Campbell, Camex Operating Company	10/13/93	10/13/93	10/18/93
41	James H. Rawls, Hughes-Rawls Corporation	10/13/93	10/13/93	10/18/93
42	Frank J. Dillon, Alaska Trucking Association Inc.	10/14/93	10/14/93	10/18/93
43	Wade Fortenbery, Fortenbery Operating Company Inc.	10/15/93	10/15/93	10/18/93
44	D.A. Kimball, Burk Royalty Co.	10/15/93	10/15/93	10/18/93
45	Alan B. Hornbeak, JN Exploration & Production (Gulf Coast Division)	10/15/93	10/15/93	10/18/93
46	C.R. Marshall, BHP Petroleum (BHP's Report to Shareholders and Annual Report to Securities and Exchange Commission available from Vincent Brown at ext. 787-1125)	10/15/93	10/15/93	10/18/93
47	Ted Stevens, U.S. Senator (Package contains letters from constituents)	10/13/93	No Postmark	10/19/93
48	Joseph F. Wehrman, Koncor Forest Products Company (Attached to letter from Senator Stevens)	10/5/93	No Postmark	10/19/93
	John Shively, NANA Development Corporation(Attached to letter from Senator Stevens, MMS received a copy on 10/7/93, letter number 30)			
49	Thomas R. DeLaHunt	10/15/93	10/16/93	10/19/93
50	Kenneth J. Hammons, Alaska Pulp Corporation	10/15/93	10/15/93	10/20/93

Letter No.	Name of Commenter	Date of Letter	Date Postmarked	Date Received
51	Ceci Wallen, Petty Ranch Company	10/15/93	10/18/93	10/21/93
52	Joseph F. Wehrman, Koncor Forest Products Company	10/19/93	10/19/93	10/22/93
53	Christine Hansen, Interstate Oil and Gas Compact Commission	10/19/93	10/20/93	10/22/93
54	Wayne L. Laufer, Bois d'Arc Operating Corporation	10/20/93	UPS	10/22/93
55	Patrick L. Willis, City Attorney, Manitowoc, Wisconsin	10/22/93	10/22/93	10/25/93
56	Roland Gow, Questar Corporation	10/21/93	10/21/93	10/25/93
57	Charles B. Wiley,	10/21/93	10/21/93	10/25/93
58	W.L. Douglas, Resource Securities Corporation	10/22/93	10/22/93	10/25/93
59	David Dybdahl, Willis Corron	10/21/93	10/22/93	10.25/93
60	Dennis E. Wine, The Surety Association of America	10/21/93	10/22/93	10/25/93
61	Paul Hastings and Edward Moss, Willis Faber & Dumas Limited	10/18/93	10/21/93	10/25/93
62	Steven H. Craft, Craft Petroleum Company	10/20/93	10/20/93	.10/25/93
63	David K. Brooks, David K. Brooks	10/20/93	10/20/93	10/25/93
64	Steve L. Collins, Halliburton Energy Services	10/24/93	10/20/93	10/25/93

Letter No.	Name of Commenter	Date of Letter	Date Postmarked	Date Received
65	P.W. Vassar, El Toro Oil Company	10/20/93	10/20/93	10/25/93
66	Charles A. Ellis, KWB Oil Property Management	10/22/93	Airborne Express	10/22/93
67	John A. Rathmell, Adams and Porter	10/21/93	10/22/93	10/25/93
68	Morris Burns, WeCOTGA	10/21/93	10/21/93	10/25/93
69	Roger E. Muns, Hughes Oil Company (Reply requested)	10/22/93	10/22/93	10/25/93
70	Thomas A. Allegretti, The American Waterways Operators (Reply requested)	10/25/93	10/26/93	10/27/93

INSERT 2

On page 70, line 1546, insert the following:

The Minerals Management Service (MMS) is unable to provide information on cleanup and associated damage expenses from an oilspill caused by an "onshore facility" since these facilities do not fall under the Department of the Interior's jurisdiction. However, it is our understanding that this information is being provided by the Environmental Protection Agency and the Department of Transportation.

The MMS is developing information on oilspill cleanup and damage costs from OCS facilities. The Bureau is also attempting, through its Advance Notice of Proposed Rulemaking process, to obtain information regarding oilspills from "offshore facilities" located on State territorial seas and inland navigable waters. We will be glad to provide this information to the Committee when it is complete.

INSERT 3

On page 82, line 1857, insert the following:

We are examining this issue in conjunction with the Department of the Interior Solicitor's Office. In general, we are advised that the Minerals Management Service (MMS) will have to follow previous court decisions construing the Clean Water Act. These are the same court decisions that define the terms "Waters of the United States" and "Navigable Waters" for the Corps of Engineers and the EPA.

The MMS is continuing to evaluate how much flexibility is available under the statute. Public comments on this question are being collected as part of the Advanced Notice of Proposed Rulemaking process and will be provided to the Committee after the comment period closes.

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

FEB 16 1994

Honorable Gerry Studds
Chairman, Committee on Merchant Marine
and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to enclose responses to questions submitted by the Committee as a follow-up to the October 26, 1993, hearing on certificates of financial responsibility for offshore facilities (section 1016(c) of P.L.101-380).

Thank you for the opportunity to provide this material to the Committee. If you have any further questions or need additional information, please let us know.

Sincerely,

Tom Fry
Director

Enclosure

cc: Honorable Jack Fields
Honorable Solomon Ortiz
Honorable Curt Weldon

Tauzin Question 1.

What is the annual revenue generated from OCS royalties, rents, and permits to the U.S. Treasury? What would be the estimated impact if this rule is implemented and the industry is unable to attain insurance coverage?

Answer:

a. The Minerals Management Service (MMS) collected approximately $2.78 billion in OCS revenues in Fiscal Year 1993. Since 1954, the OCS program has generated over $100 billion in Federal revenues.

b. We have not yet done any detailed analysis which would allow us to estimate the full impact of a rule. However, we have received several hundred comments to date on the ability of potential "responsible parties" to meet the requirements of section 1016(c). For example, based on their comments, we estimate that many, if not all, independent oil and gas operators currently holding leases on the OCS may be unable to meet the requirements of section 1016(c). If this estimate is correct, up to $1 billion in Federal revenues could go unrealized each year in the near term in the event those operators are forced to shut down their operations.

Tauzin Question 2.

What has been the average total costs for cleanup and damages from offshore facilities on the OCS in the last 5, 10, 15, 20 years? Could the industry survive with a sliding scale like tankers are allowed in OPA-90? Have the total costs for past cleanups exceeded the $35 million amount that was required prior to OPA-90?

Answer:

a. While MMS has no reporting authority to collect oil spill cost information, we have utilized a model to estimate major Gulf of Mexico spills (in 1992 dollars) associated with offshore facilities on the OCS. The breakdown of these estimates for the period 1970-1990 is as follows:

1985-1990 3 major spills averaging $6.4 million.

1980-1990 4 major spills averaging $5.5 million.

1975-1990 Same as 1980-1990; no additional major spills.

1970-1990 11 major spills averaging $8.3 million.

Note: The term "major" spill refers to spills of 200 barrels or more.

b. Section 1004(a)(1) of OPA-90 specifies liability limits for tank vessels based on tonnage. In section 1016(a), the responsible party for a vessel is then required to maintain evidence of financial responsibility "sufficient to meet the maximum amount of liability to which ... the responsible party could be subject under section 1004..." This requirement is directly tied to the varying liability limits outlined in section 1004(a)(1). Therefore, tank vessels can show varying amounts of financial responsibility, depending on the individual characteristics of each particular tank vessel.

However, in section 1004(a)(3) liability limits for all "offshore facilities" are set at a specified amount, regardless of size or oil spill risk. Section 1016(c) then requires a responsible party for an "offshore facility" to "establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected under section 1004(a)..." Unlike vessels, there is no "sliding scale" requirement which takes into account size and risk.

Based on our best available information, the MMS estimates that current OCS oil and gas operators would be able to meet financial responsibility requirements based on a "sliding scale" approach

similar to that used for tank vessels or one which takes into account factors such as size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, and history of discharges.

c. MMS data indicate that major oil spill costs for offshore facilities on the OCS have not exceeded the $35 million level, as specified in the OCS Lands Act, in any incident in the last 20 years. The largest spill in this time period was approximately $10 million (in 1992 dollars). Since 1964, there have been only 2 spills which have exceeded the $35 million level---the 1969 Santa Barbara oil spill ($120 million in 1992 dollars); and 1 spill in the Gulf of Mexico in 1967 (approximately $88 million in 1992 dollars).

Tauzin Question 3.

Why does MMS call certain facilities "offshore" when those same facilities are called "onshore" by the EPA and the Coast Guard for facility response plans? Does a MOA exist between MMS, the Coast Guard and EPA on agency responsibility for OPA 90?

Answer:

a. We do not know to what statement of EPA or the Coast Guard you refer. We recognize that, in the matter of facility response plans, there will need to be close coordination when a onshore facility that is regulated by one of those agencies is connected to an offshore facility that is subject to MMS jurisdiction.

We would also like to stress the fact that the MMS has not yet determined the scope of the term "offshore facilities" for purposes of implementing section 1016(c). Public comments on this question are being collected as part of our Advance Notice of Proposed Rulemaking (ANPR).

For example, the August 25, 1993, Federal Register Notice (Vol. 58, No. 163; pp. 44797-44799) announcing the ANPR requests information on the "types and locations of facilities that may be subject to the offshore financial responsibility requirement of OPA 90." In particular, the ANPR requests information on whether the definition of "offshore facility" includes certain pipeline situations; fuel storage tanks in, on, or under navigable waters (including facilities in private marinas); and other structures to which the applicability of OPA 90 may be unclear. The ANPR comment period has been extended to February 28, 1994.

b. After the passage of OPA-90, Executive Order 12777 assigned responsibility for all "offshore facilities" to the Department of the Interior. This responsibility includes 1) oil spill prevention and response requirements; and 2) evidence of financial responsibility.

There is no MOA that exists between MMS and the Coast Guard and EPA on financial responsibility. However, an MOA is currently being developed between the MMS, the Coast Guard and EPA on agency responsibilities for oil spill prevention and response provisions under OPA 90.

Tauzin Question 4.

Has the OCS trust fund ever been used to pay for costs associated with a spill from offshore facilities?

Answer:

The Coast Guard has received oil spill claims for payment against the Oil Spill Liability Trust Fund it administers under OPA 90. It is possible some of these Fund claims may result from non-payment by the responsible party for offshore facilities in State waters. To our knowledge, no payments have been made associated with facilities located on the Federal OCS.

Tauzin Question 5.

How did MMS interpret the definition of "navigable waters" to include wetlands, non-navigable waterways, etc.?

Answer:

The MMS has not yet determined the scope of the term "navigable waters." We are continuing to evaluate how much flexibility is available with regard to this definition. Public comments on this question are being collected as part of the Advance Notice of Proposed Rulemaking.

The August 28, 1993, Federal Register Notice announcing the Advance Notice of Proposed Rulemaking (ANPR) solicits information and comments on MMS' preliminary interpretation of OPA 90 requirements. For example, under the ANPR section entitled "Geographic Jurisdiction," the ANPR notes that "the financial responsibility requirements apply to all U.S. navigable waters." It further notes that "OPA 90 defines U.S. "navigable waters" as waters of the United States, including the territorial sea. Thus, this definition could encompass waters of all the States of the United States and the District of Columbia as well as the Commonwealth of Puerto Rico, Guam, American Somoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas and any other territory or possession of the U.S."

The MMS is further examining this issue in conjunction with the Department of the Interior Solicitor's Office. In general, we are advised that the MMS will have to follow previous court decisions on the definition of this term in the Federal Water Pollution Control Act. These are the same court decisions that define the term for the Corps of Engineers and the EPA.

Tauzin Question 6.

Does the Coast Guard consider offshore facilities to be a relative risk of spilling oil and adversely damaging the enviroment?

Answer:

We would defer to the Coast Guard in responding to this question.

Ortiz Question 1.

Do you believe Congress intended for the MMS to use OPA 90 to extend its jurisdiction into the territorial seas and inland waters of the States?

Answer:

I cannot speak to whether Congress as a whole intended for the MMS to use OPA 90 to extend its jurisdiction. We are examining the legislative history of OPA 90 in order to help determine legislative intent. We also are soliciting comments, through our Advance Notice of Proposed Rulemaking, on this, and other, issues.

Ortiz Question 2.

Does MMS have the resources to fully implement this program in OCS waters? If not, how will MMS implement this program in State and inland waters?

Answer:

a. At this time, current resources are estimated to be sufficient to implement fully the program for OCS facilities which process oil. However, to address OCS facilities which process gas only would require additional resources. Gas facilities were excluded from the Certificate of Financial Responsibility requirements found in Title III of the OCS Lands Act because there was a 1,000 barrel de minimis. However, there is no de minimis exclusion in section 1016 of OPA 90 (which supersedes requirements in the OCS Lands Act).

b. MMS would require additional resources to expand the program beyond the OCS and into State and Territorial waters. However, we do not have any estimates at this time with regard to the level of additional resources necessary to accomplish this effort.

Ortiz Question 3.

How will MMS implement this rule if Congress does not provide a legislative fix? What leeway do you think you have within the law to write reasonable regulations?

Answer:

a. The MMS is in the process of determining the scope of section 1016(c) and has made no definitive decisions with regard to a rulemaking. Therefore, it would be premature at this point to address the issue of whether the law should be amended, and if so, how. Ultimately, we plan to develop a rule that is consistent with the law and expressed Congressional intent.

b. As we stated in our testimony, the MMS would like to be able to develop approaches to implement section 1016(c) in a reasonable and balanced way that preserves the purpose of financial responsibility without creating economic hardships. We have not yet determined how much leeway we may have within the law to construct such a rule and are still in the process of gathering comments on section 1016(c) and its potential impact.

However, it appears at this point that section 1016(c) imposes the same high level of financial responsibility on all oil and gas operators equally without regard to size or risk. Further, the Act does not appear to allow the establishment of a "de minimis" level or adjustment of the level of financial responsibility according to risk.

Ortiz Question 4.

If the insurance market fails to provide coverage for smaller operators, what will be the consequence?

Answer:

It is possible that small operators may be able to form mutual indemnity pools similar to the Protection and Indemnity (P&I) Clubs for vessels. However, no such mechanisms currently exist.

Ortiz Question 5.

Why has MMS chosen to define "responsible party" in such as a way as to include not only those individuals engaged in oil and gas lease and production activities in the OCS, but also those individuals that own or operate fuel storage tanks, marinas, or other small coastal facilities?

Answer:

The MMS has not yet made a determination on the scope of application of the term "responsible party." We are in the process of collecting information on this issue through our Advance Notice of Proposed Rulemaking.

Ortiz Question 6.

What is the purpose for holding all of the public hearings and workshops over the next few months? How does MMS intend to use the information provided? Do you plan on holding hearings in all regions and communities impacted by this rule, including those in Alaska?

Answer:

a. We hope to gather information from the parties that could be potentially affected by such a rule.

b. This information will be used to assess the effects and impacts of a proposed rule and to explore all avenues that may be available to develop a fair and equitable rule under the law.

c. MMS has held hearings in New Orleans, Houston, and San Francisco. Additional meetings are scheduled for Cleveland, Ohio and Anchorage, Alaska.

Ortiz Question 7.

There are over a thousand fishing, sport, and pleasure crafts and marinas along coastal waters of the United States. Many of the marinas have holding tanks with docks. The tanks and meters are on land, and the dock extends out into the water. Pipes connect the fuel tanks to the meters and pipes run from the meters to the docks. Based on your understanding of the law, would these marinas have to provide evidence of financial responsibility of $150 million?

Answer:

We have made no final determinations at this time with regard to the types of facilities which could be affected by the requirements of section 1016(c). We are in the process of collecting information on this issue through our Advance Notice of Proposed Rulemaking. Further, we are reviewing legislative history as it pertains to pre-OPA 90 interpretation of the terms "onshore facility" and "offshore facility" in regard to facilities with components on land connected to components in, on or under navigable waters.

Ortiz Question 8.

There are thousands of trucks that carry fuel across bodies of water such as the 2 1/2 mile Port Isabel South Padre Island Texas causeway and the 22 mile long Lake Pontchartrain causeway in Louisiana. Also many railroad tanker cars which carry fuel across rivers, streams, etc., throughout the United States. Will each truck or train car have to provide evidence of financial responsibility of $150 million?

Answer:

As stated in the previous question, we are in the process of determining the scope of section 1016(c). Therefore, it would be premature to discuss which facilities may, or may not, be affected by this particular provision. However, we will be glad to share additional information with the Committee as our rulemaking process proceeds.

Ortiz Question 9.

I understand there is a fund in place that has collected $8 billion from sales of petroleum products to handle oil spills should they occur. What information do you have on this fund?

Answer:

The MMS is not aware of any fund available for oil spill cleanup and related costs except the Oil Spill Liability Trust Fund administered by the National Pollution Funds Center of the U.S. Coast Guard. The Fund now has a balance exceeding $1 billion and is funded through a 5 cent/barrel tax on domestic and imported oil, interest, cost recovery and any fines which are levied. This Fund, authorized by OPA 90, is available for oil spill cleanup and damage claims in the event the spiller fails to pay.

CONGRESSMAN ORTIZ QUESTION
WITH COAST GUARD ANSWERS: 1
COFR HEARING, 26 OCT 93

QUESTION. I UNDERSTAND THAT THERE IS A FUND IN PLACE THAT HAS COLLECTED OVER $8 BILLION FROM SALES OF PETROLEUM PRODUCTS TO HANDLE OIL SPILLS SHOULD THEY OCCUR. WHAT INFORMATION DO YOU HAVE ON THIS FUND?

Answer. Section 9507 of the internal revenue code established funding for the $8 billion Hazardous Substance Superfund. While the petroleum industry does contribute to the Superfund (which is administered by the Environmental Protection Agency), that fund is used for removal and remediation of releases of hazardous substances, pollutants and contaminates and is currently not available for response to oil spills.

The Oil Pollution Act of 1990 governs the use of the $1 billion Oil Spill Liability Trust Fund (OSLTF), established by section 9509 of the Internal Revenue Code. The Coast Guard's National Pollution Funds Center (NPFC) administers the OSLTF primarily for funding emergency response to actual and threatened oil spills affecting the navigable waters of the United States and the exclusive economic zone. Another primary use of the OSLTF is the payment of uncompensated removal costs and damages resulting from such discharges or threats. The Coast Guard submits OSLTF activity reports to Congress quarterly.

CONGRESSMAN TAUZIN QUESTION
WITH COAST GUARD ANSWERS: 1
COFR HEARING, 26 OCT 93

QUESTION: WHAT WAS THE ESTIMATED AMOUNT OF MONEY THAT THE OFFSHORE DRILLING AND PRODUCTION INDUSTRY HAS PAID INTO THE OPA-90 OIL SPILL TRUST FUND?

Answer. The money paid by the offshore drilling and production industry and deposited into the Oil Spill Liability Trust Fund (OSLTF) is a 5 cent per barrel tax, which is collected on all domestic and imported oil. The total amount of tax collected since the passage of OPA-90, from all sources, is $920,811,768. The Department of Treasury indicates the amount collected from the offshore drilling and production industry is approximately $27 million in calendar year 1991 and $23 million in 1992. The 1993 data is not currently available.

CONGRESSMAN TAUZIN QUESTION
WITH COAST GUARD ANSWERS: 2
COFR HEARING, 26 OCT 93

QUESTION: WHEN THE COAST GUARD HAD AUTHORITY OVER CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES WERE THERE ANY PROBLEMS WITH OCS FACILITIES HAVING TO COMPLY WITH THE $35 MILLION IN COVERAGE?

Answer. The primary insurer of offshore risks, underwriters at Lloyd's of London, originally refused to provide offshore facility owners and operators with the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA 78) insurance guarantees. Lloyd's felt that OCSLAA 78 was so loosely worded that guarantors (insurers) could be held liable without limit for removal costs and damages. Thus, it became necessary for offshore facility operators to arrange to be self-insurers or to obtain financial guarantees from parent or other affiliated companies in order to obtain the Coast Guard certificates of financial responsibility required by OCSLAA 78. This was not an easy task for small, independent operators.

Eventually, a small number of non-Lloyd's insurers (led by Underwriters Indemnity of Houston) began to provide OCSLAA 78 insurance guarantees for offshore facility owners and operators. When OCSLAA 78 was amended by P.L. 100-610 in 1988 to confirm the limit of a guarantor's liability, Lloyd's agreed to provide insurance guarantees to its insured offshore facility owners and operators.

CONGRESSMAN TAUZIN QUESTIONS
WITH COAST GUARD ANSWERS: 003.M
VESSEL RESPONSE PLANS, 26 OCT 93

QUESTION. DOES THE COAST GUARD CONSIDER OFFSHORE FACILITIES TO BE A RELATIVE RISK OF SPILLING OIL AND ADVERSELY DAMAGING THE ENVIRONMENT?

Answer. Yes. All oil handling, storage, or transferring facilities pose a risk to the marine environment. Though regulatory programs have been instituted to reduce the probability of an incident, facilities located on, in, or under the water pose a greater risk of a spill entering directly into the water than an onshore facility.

CONGRESSMAN TAUZIN QUESTIONS
WITH COAST GUARD ANSWERS: 004.M
VESSEL RESPONSE PLANS, 26 OCT 93

QUESTION. IF MARINAS AND WATERFRONT FUEL FACILITIES ARE UNABLE TO ACQUIRE A CERTIFICATE OF FINANCIAL RESPONSIBILITY, WHERE WILL SPORT, FISHING, AND PLEASURE CRAFTS BE ABLE TO GET FUEL? DO MARINAS POSE A GREAT RISK TO THE ENVIRONMENT DUE TO OIL SPILLS?

Answer. If a facility cannot obtain a Certificate of Financial Responsibility, it cannot handle fuel. Vessels would have to seek an alternative facility.

All oil handling, storage, or transferring facilities pose a risk to the marine environment. The risk to the environment posed by marinas and waterfront fuel facilities is dependent on many factors including, but not limited to, their location and the quantity of oil handled.

COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

ON

THE MINERALS MANAGEMENT SERVICE'S ADVANCED NOTICE OF PROPOSED RULEMAKING

"OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES INCLUDING STATE SUBMERGED LANDS AND PIPELINES"

58 Federal Register 44797
August 25, 1993

Submitted to the Minerals Management Service (MMS)
December 20, 1993

(The complete document is on file at the Coast Guard and Navigation Subcommittee Office.)

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ATTACHMENT A: MATRIX OF FEDERAL AGENCIES' RESPONSIBILITIES UNDER EXECUTIVE ORDER 12777

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ATTACHMENT E: MEMORANDUM OF UNDERSTANDING: JURISDICTION CONCERNING SPILL RESPONSE

ATTACHMENT F: O'MELVENY & MYERS MEMORANDUM

INDEPENDENT FUEL TERMINAL OPERATORS ASSOCIATION
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901-15TH STREET, N.W.
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STATEMENT

on the

MINERALS MANAGEMENT SERVICE

proposal on

FINANCIAL RESPONSIBILITY

under

THE OIL POLLUTION ACT OF 1990

submitted to the

COMMITTEE ON MERCHANT MARINE AND FISHERIES

UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

December 21, 1993

The Independent Fuel Terminal Operators Association ("IFTOA") hereby submits this statement to the Subcommittee on Coast Guard and Navigation and the Subcommittee on Oceanography, Gulf of Mexico and the Outer Continental Shelf on an advanced notice of proposed rulemaking ("ANPR") issued by the Minerals Management Services ("MMS") regarding Certificates of Financial Responsibility ("COFR") for "offshore facilities," as provided for in the Oil Pollution Act on 1990 ("OPA 90").1/

IFTOA strongly supports OPA 90's commitment to preventing oil spills and ensuring a speedy and effective response when they do occur. IFTOA believes, however, that MMS's interpretation of the scope of the prospective rule is overly broad and is neither supported by the statutory language nor the legislative history. If MMS's interpretation is adopted in final form, IFTOA believes that a number of its members would be unable to obtain a COFR. Even if a terminal could obtain insurance for $150 million -- and the availability of such insurance is not certain -- the cost would be prohibitive. Moreover, even with adequate insurance, a number of IFTOA members would not be able to meet the statute's financial responsibility requirements. The insurance industry has stated publicly that it will not permit its policies to serve as "evidence of financial responsibility" under OPA 90. As a result, only those terminals able to self-insure could obtain a COFR from MMS. The rule could at best be a heavy financial burden on some terminals and, at worst, reduce substantially the number of terminals permitted to operate.

1/ See 58 Fed. Reg. 44797 (Aug. 25, 1993).

IFTOA strongly believes that MMS currently has the legal authority to limit OPA 90's financial responsibility requirements to traditional offshore facilities.

I. Description of IFTOA

IFTOA is an association of 18 companies which own or control land-based oil terminals located along the East Coast from Maine to Florida capable of receiving ocean-going tankers.[2/] None is affiliated with a major oil company. Members are primarily independent marketers of home heating oil, gasoline, and residual fuel oils at the wholesale and retail levels. The great majority of Association members are privately-held businesses. They are an essential component of the product distribution system upon which East Coast retail marketers and consumers depend for supplies.

Accordingly, as marketers of petroleum, IFTOA members and their customers would be significantly affected if onshore terminals were made subject to OPA 90's financial responsibility requirements.

II. MMS's Advanced Notice of Proposed Rulemaking

OPA 90 requires "offshore facilities" to evidence financial responsibility in the amount of $150 million. MMS interprets that requirement broadly, stating that any person owning or

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2/ A list of members and a more detailed description of the Association is attached. (Attachment A).

operating pipelines located in, on, or under the navigable waters of the United States are subject to the rule because those pipelines are considered "offshore facilities."

MMS states, "[t]hus, for example, a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the $150 million financial responsibility provisions of this rule, as would the operator of an oil well in the Great Lakes." Oil Spill Financial Responsibility, 58 Fed. Reg. 44797, 44798 (Aug. 25, 1993). This statement suggests that a pipeline leading from a shore-based oil terminal to a dock where tankers moor would qualify as an "offshore facility," thereby triggering OPA 90's financial responsibility requirements. IFTOA believes that MMS's interpretation of "offshore facility" is legally incorrect. It would ignore the clear distinctions made in the statute between "onshore" and "offshore" facilities. If MMS's interpretation were adopted it would have serious consequences for the industry.

III. MMS's Preliminary Interpretation is Overly Broad and Inconsistent with OPA 90.

a. "Onshore" versus "Offshore" Facility

OPA 90 defines "offshore facility" as "any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel." 33 U.S.C. § 2701(22) (West Supp. 1993). An "onshore facility,"

as defined by OPA 90, "means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. § 2701(24) (West Supp. 1993). OPA 90 relied on definitions used in the Federal Water Pollution Control Act of 1972 ("FWPCA"), 33 U.S.C. §§ 1321(a)(10) & (11). OPA 90's legislative history states that

> [t]he terms "offshore facility," "onshore facility," . . . and "vessel" are re-stated verbatim from section 311(a) [33 U.S.C. § 1321(a)] of the FWPCA. . . . In each case, these FWPCA definitions shall have the same meaning in this legislation as they do under the FWPCA and shall be interpreted accordingly. To the extent that docks, piping, wharves, piers and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land-based terminal are deemed to be part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility under the Conference substitute.

H.R. Conf. Rep. No. 101-653, 101st Cong., 2d Sess. 779-80 (1990) (emphasis added).

b. Judicial Construction of "Onshore Facility"

Given the directions of OPA 90's Conference Report, it is necessary to examine how an onshore facility is defined and applied under the FWPCA. In his testimony at the joint hearing on October 26, 1993, MMS Director Tom Fry conceded that the OPA 90 Conference Report re-stated verbatim the definitions used in the FWPCA. However, Mr. Fry stated that "discussions with the Environmental Protection Agency and the Department of Transportation, and our own research, have not disclosed any pre-OPA 90 interpretation of the FWPCA." IFTOA wishes to bring to the attention of the Subcommittees a pre-OPA 90 case that holds

an oil terminal and all its appurtenances to be an onshore facility under the FWPCA.

In Union Petroleum Corp. v. United States, 651 F.2d 734 (Ct. Cl. 1981), the United States Court of Claims held that an onshore facility, as defined under the FWPCA, encompassed the plaintiff's entire oil terminal and distribution facility, including the pipeline that ran to the pier. The plaintiff's terminal consisted of an "onshore facility, dock area and the pipeline area that leads to the dock. . . ." Id. at 737. The Court of Claims first quoted 33 U.S.C. § 1321(a)(10), noting that "[t]he Act broadly defines an 'onshore facility'. . . ." Id. at 742 (emphasis added). The court then concluded: "There is no doubt that under this definition the Union terminal, consisting in part of a transportation facility which includes loading racks for trucks and railroad tank cars, and a dock extending into Chelsea Creek for oil tankers, is an 'onshore facility.'" Id. Because the pipeline's terminus was on the shore, attached to Union's tank farm for the storage of oil, it was properly considered part of the onshore facility.

Thus, Union Petroleum Corp. is a pre-OPA 90 case that confirmed the understanding of Congress when it enacted OPA 90: land-based oil terminals are onshore facilities as defined under both the FWPCA and OPA 90. The case stands for the proposition that the various components of a shore-based facility should not be segmented, merely because the pipeline portion passes over navigable waters to reach a dock. That is, a pipeline connecting

a dock and a terminal should not be considered an offshore segment of an otherwise onshore oil facility. This conclusion is consistent with courts' understanding that a dock or pier is considered an appurtenance to the shore from which it originates. See Sea Cabin on the Ocean IV Homeowners Ass'n v. City of North Myrtle Beach, 828 F.Supp. 1241, 1245-46 (D.S.C. 1993) (discussing various cases holding pier is appurtenance to shore-based realty).

Union Petroleum Corp.'s logic is reflected in the OPA 90's Conference Report: "[t]o the extent that docks, piping, wharves, piers and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land-based terminal are deemed to be part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility. . . ." MMS is mistaken, therefore, in its claim that there is no pre-OPA 90 interpretation construing the definition of onshore facility. Congress clearly intended that a pipeline, dock, wharf, or other appurtenance that is "directly or indirectly connected to a land-based terminal" to be part of an onshore facility under OPA 90, and should not be subject to the financial responsibility requirements applicable to offshore facilities.

Moreover, other agencies interpreting OPA 90 have promulgated regulations consistent with this congressional intent -- that a pipeline connected to a shore-based facility is an "onshore facility" even if it crosses navigable waters. A recent

interim final rule applicable to onshore pipelines issued by the Research and Special Programs Administration of the Department of Transportation ("RSPA") noted that

> most onshore pipelines, because of their locations, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. This determination is based on the volume of oil transported by pipelines and the fact that they often cross, or are located adjacent to, navigable waters. Thus, most onshore oil pipeline operators will be required to prepare and submit response plans.

Response Plans for Onshore Oil Pipelines, 58 Fed. Reg. 247 (January 5, 1993) (emphasis added). Hence, the simple fact that an onshore pipeline crosses navigable waters does not render that pipeline an offshore facility where it is part of an integrated onshore unit. RSPA's comments reflect the common sense approach of Union Petroleum Corp., that a pipeline crossing over water is still considered an onshore facility. See, e.g., 49 C.F.R. § 194.3 (1993).

c. OPA 90's Treatment of "Onshore Facilities"

Congress took careful steps in framing OPA 90 to exempt onshore facilities from the financial responsibility requirements demanded of offshore facilities and vessels. Onshore facilities, along with the later two categories, are included in all other respects of the statute. For example, OPA 90 defines "responsible party" as including vessels, offshore facilities and onshore facilities. 33 U.S.C. § 2701(32). Thus, all three categories are addressed in the bulk of OPA 90's substantive provisions, including those dealing with the elements of

liability (33 U.S.C. § 2702), defenses to liability (33 U.S.C. § 2703), limits on liability (33 U.S.C. § 2704), interest paid (33 U.S.C. § 2705), recovery by the responsible party (33 U.S.C. § 2708), claims procedure (33 U.S.C. § 2713), advertisement of source (33 U.S.C. § 2714) and subrogation (33 U.S.C. § 2715). In contrast, the financial responsibility section is specifically limited, and applies only to vessels and offshore facilities. See 33 U.S.C. §§ 2716(a) & (c).

The explicit exclusion of onshore facilities was not a Congressional oversight; rather, Congress specifically choose to exempt onshore facilities from the financial responsibility requirements because of the fundamentally different nature of those facilities.[3/] Onshore facilities are subjected to a plethora of state, county, and city regulations that produce accountability and good corporate citizenry, and ensure that the cleanup of any potential spills from such facilities will be handled expeditiously. Moreover, Congress was aware that the high premiums necessary to "evidence financial responsibility" on the part of onshore facilities would be of such an overwhelming

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3/ Congressional debate over OPA 90 reveals that Members of Congress were most concerned with discharges from vessels and offshore facilities. For example, Senate Minority Leader Bob Dole (R-KA) declared that "the bill would finally establish a single fund and combine it with a single strategy for attacking oil spilled from tankers, barges, and OCS facilities." 135 Cong. Rec. S10089 (daily ed. Aug. 4, 1989) (emphasis added). Representative Ralph Regula (R-OH) stated he wanted to "focus attention on the fact that there are two dangers to spills, platforms and tankers." 135 Cong. Rec. H8274 (daily ed. Nov. 9, 1989) (emphasis added).

fiscal burden as to eliminate many participants in this vital component of the petroleum industry.

d. "Facility" Versus "Offshore Facility" Under OPA 90

In its ANPR, MMS did not cite OPA 90's definition of "offshore facility," but instead focused on the definition of "facility." That definition added by OPA 90 includes both onshore and offshore facilities. Under the ANPR's heading of "Affected Facilities," MMS noted that the definition of facility "specifically includes pipelines." 58 Fed. Reg. 44797, 44797 (1993). Yet, in Executive Order 12777, the President expressly delegated to the Department of the Interior the task of issuing regulations with respect to "offshore facilities," not "facilities" generally. Thus, IFTOA believes MMS has improperly focused on the wrong definition for its analysis.

The term "facility," as defined in OPA 90, is a broad umbrella term encompassing onshore and offshore facilities. The fact that a "facility" includes pipelines does not automatically mean that a pipeline attached to a facility makes that entity an "offshore facility." Accordingly, MMS is incorrect in its assertion that OPA 90's financial responsibility requirement applies to every "facility" located in, on, or under the navigable waters of the United States; the statute only applies to "offshore facilities" so situated.

e. Financial Responsibility Limited to Traditional Offshore Facilities

Based on OPA 90's plain language differentiating "onshore" and "offshore" facilities, the Congressional intent reflected in

the legislative history, and the Union Petroleum Corp. decision, MMS's broad interpretation of "offshore facility" is incorrect. Accordingly, OPA 90's financial responsibility requirements should be limited to traditional offshore facilities -- the exploration and production units.

IV. National Petroleum Council Report Concludes MMS's Position is Incorrect

On October 8, 1993, Secretary of Energy Hazel R. O'Leary asked the National Petroleum Council ("NPC")[4/] to assess, from an energy production perspective, the implications of MMS's ANPR. On December 9, 1993, NPC issued its Interim Report ("the Report") entitled "The Oil Pollution Act of 1990." NPC found that MMS's preliminary interpretation of OPA 90 is incorrect and would cripple a large segment of the domestic oil and gas industry, from exploration to retail marketers. Report at 2. NPC adopted two conclusions: (1) MMS should narrow the scope of its proposed rulemaking, and (2) sufficient flexibility exists in OPA 90 for MMS to adopt creative regulatory methods to permit true offshore facilities to demonstrate financial responsibility without being unduly burdened.

4/ Established in 1946, the NPC is a standing advisory council whose purpose is "to advise, inform, and make recommendations to the Secretary of Energy on any matter, requested by the Secretary, relating to oil and natural gas or the oil and gas industries." National Petroleum Council, The Oil Pollution Act of 1990 A-2 (Dec. 9, 1993) (Interim Report).

The NPC concludes that MMS's broad interpretation of the scope of the anticipated rule is not supported by either the statute or its legislative history. The Report observes:

> Under the MMS proposal, OPA's financial responsibility obligation could apply to pipelines, wharves, or other appurtenances that cross navigable waters but are connected to onshore facilities. . . . The broad definition of "offshore facilities" as interpreted by the MMS . . . reaches across the oil and gas industry to encompass exploration, production, handling, storing, processing, or transporting facilities and equipment in all fifty states and territories. This preliminary interpretation, by the MMS, is contrary to OPA and its legislative history. Congress did not intend to extend the financial responsibility obligations to onshore facilities and took care to structure the law accordingly.

Id. at 21.

With respect to the intent of Congress, the Report states: "OPA is clear in its distinct and separate treatment of offshore and onshore facilities. The terms are individually defined and used independently throughout the Act." Id. at 60-61. The NPC discusses Union Petroleum Corp.'s holding and concludes: "[p]ipelines that are an integrated part of an onshore facility are properly classified as 'onshore facilities' and thus are exempt from the scope of the proposed rule." Id. at 63.

The Report notes:

> Historically, refineries and terminals have always been considered onshore facilities from a regulatory and legislative standpoint, as well as from a common sense standpoint. . . . Since virtually all refineries and terminals either have a dock with a pipeline or other appurtenance or a pipeline connection that eventually passes in, on, over, or under navigable waters, the MMS interpretation of "offshore facility" encompasses virtually all refineries and terminals in the country. This mandatory financial responsibility is, in effect,

> a "permit to operate." Without it, a facility must shut down its operations.

Id. at 60 (emphasis in original).

The NPC analyzes the demographics of the U.S. petroleum distribution system and the impact of the ANPR on oil terminals. The Report finds:

> In general, if the MMS rule were made applicable to these types of traditional onshore facilities, these companies would have great difficulty or, in many instances, be unable to comply with the OPA financial responsibility obligation. Several of the companies could self-insure, several could purchase insurance if there were any capacity in the market and if the rates were not exorbitant, but it is likely that the majority could not meet the obligation. As a result, the market would lose a substantial portion of the independent distribution system on the East Coast and those that remained would be financially weakened and less competitive.

Id. at 67. The NPC finds further that "[a] substantial number of refineries and terminals could be forced to close as a result of the MMS interpretation of OPA financial responsibility requirements." Id. at 68.

The Report concludes that MMS "has the authority to adopt regulatory methods of demonstrating financial responsibility under [OPA 90] that both conform with commercial realities and safeguard the public interest in assuring that operating companies have the financial resources to pay for oil pollution cleanup costs and damages." (emphasis in original). The NPC asserts that MMS (1) can narrow the scope of its regulations to traditional offshore facilities, and (2) expand the existing criteria for self-insurance by recognizing that an insurance

company's commercial promise of indemnity constitutes an asset of a self-insuring responsible party.

V. MMS Has Flexibility to Modify Definition of Self-Insurance

Independent producers operating traditional exploration and production facilities on the Outer Continental Shelf are concerned that the requirement for evidence of financial responsibility in the amount of $150 million may force them out of business. Even assuming that sufficient insurance is available in the market and the cost of such insurance is not prohibitive, most still would have difficulty obtaining a COFR.

The insurance industry's interpretation of OPA 90's financial responsibility requirements potentially makes insurers liable under the Act as "guarantors" subject to direct suit, as opposed to indemnifiers. Underwriters are uncomfortable with assurances that they would only be exposed up to $150 million on any one oil spill. The industry believes that because of OPA 90's direct action provisions, the lack of normal policy defenses, and the statute's refusal to preempt state liability laws, they will be subject to suit as "responsible parties." Therefore, the insurance industry will not permit its policies to serve as evidence of financial responsibility under OPA 90. As a result, these offshore facilities will not be able "to evidence

financial responsibility" and thus will not be able to operate.[5/]

However, the section of OPA 90 setting out the different methods of evidencing financial responsibility provides for self-insurance or "other evidence of financial responsibility approved by the President." 33 U.S.C. § 2716(d). Hence, MMS has the authority to modify the methods of self-insurance set out in OPA 90. IFTOA believes that MMS has sufficient flexibility to address this problem. It can modify its definition of self insurance -- permit an offshore facility to treat a standard indemnification contract as an asset, thereby qualifying as self-insurers. This result would permit certain offshore facilities, including many independent producers, to self-insure, providing the environmental protection Congress intended and avoiding the problems raised by the insurance industry.

VI. Conclusion

Based on the foregoing, MMS should:

(1) Pursuant to the language and legislative history of OPA 90, limit the scope of its proposed rulemaking to traditional offshore facilities -- exploration and production operations; and

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5/ The other methods of evidencing financial responsibility -- surety bond, letter of credit, or third party guarantee -- are either too expensive for most offshore facilities to use or are not available. See NPC Interim Report at 47.

(2) Use its statutory authority to modify the definition of self-insurance to ease the burden on offshore facilities which cannot obtain a COFR under the current methods.

Thank you very much.

ATTACHMENT A

MEMBERS

INDEPENDENT FUEL TERMINAL OPERATORS ASSOCIATION

Castle Oil Corporation
Harrison, New York

Catamount Petroleum Corporation
Chelsea, Massachusetts

Champion Energy Corporation
Greenwich, Connecticut

Coastal Oil New York, Inc.
Hasbrouck Heights, New Jersey

Colonial Oil Industries, Inc.
Savannah, Georgia

Getty Petroleum Corp.
Jericho, New York

Global Petroleum Corp.
Waltham, Massachusetts

Gulf Oil-Cumberland Farms
Canton, Massachusetts

Meenan Oil Co., Inc.
Syosset, New York

Northeast Petroleum Division
of Cargill, Incorporated
Chelsea, Massachusetts

Northville Industries Corp.
Melville, New York

PETRO
Stamford, Connecticut

C.H. Sprague & Son Company
Portsmouth, New Hampshire

Statia Terminals, Inc.
Miami, Florida

Steuart Petroleum Company
Piney Point, Maryland

Tosco Corporation
Riverhead, New York

Webber Tanks, Inc.
Bucksport, Maine

Wyatt, Inc.
New Haven, Connecticut

The 18 companies listed above own or control terminals capable of receiving ocean-going tankers. None is affiliated with a major integrated oil company. Members of the Association are independent marketers of home heating oil (No. 2 fuel), residual fuel oils (Nos. 4, 5 and 6 fuels), gasoline and other petroleum products.

They distribute more than 50% of the No. 2 fuel oil consumed in New England and nearly 25% of the No. 2 fuel oil consumed along the East Coast; and they distribute nearly 60% of the residual fuel oil burned by non-utility consumers in New England and nearly 50% on the East Coast.

The 18 companies own or control 70 deepwater terminals and 51 barge and/or pipeline terminals, with a total storage capacity of about 73 million barrels. Of the total, about 25 million barrels are for No. 2 fuel oil, about 25 million barrels for residual fuel oil, about 16 million barrels for gasoline and 7 million barrels for other products.

COLUMBIA GAS SYSTEM

Comments to the

House Coast Guard and Navigation Subcommittee

of the

House Committee on Merchant Marine and Fisheries

on the

Minerals Management Service

Advanced Notice of Proposed Rulemaking

Oil Spill Financial Responsibility for
Offshore Facilities Including
State Submerged Lands and Pipelines

August 25, 1993 58 FR 44797

December 13, 1993

COLUMBIA GAS SYSTEM
Comments to the
House Coast Guard and Navigation Subcommittee
of the
House Committee on Merchant Marine and Fisheries

Columbia Gas System Service Corporation, on behalf of The Columbia Gas System, Inc. (Columbia), herewith submits the following comments on the Minerals Management Service's (MMS) Advanced Notice of Proposed Rulemaking (ANPR) in the August 25, 1993 Federal Register implementing their responsibility under the Oil Pollution Act of 1990 (OPA90). The Columbia Gas System is one of the largest natural gas systems in the United States. It is made up of a parent holding company, a service company, and operating subsidiaries engaged in the onshore and offshore exploration, development, production, marketing, storage, transmission and distribution of natural gas at wholesale and retail. Included among these subsidiaries is Columbia Gas Development Corporation which is engaged in the onshore and offshore exploration, development, production, transportation and sale of oil in the domestic market. Directly or indirectly, Columbia companies serve over eight million natural gas customers in fifteen states and the District of Columbia.

Introduction

The ANPR will seriously impact virtually all but the largest exploration and production companies by forcing them to prematurely plug and abandon onshore and offshore wells and associated facilities and natural gas and oil pipelines, thereby resulting in the loss of valuable domestic natural gas and oil resources. Indeed, President Clinton focused on these resources when he introduced his Domestic Natural Gas and Oil Initiative. He stated: "Today, we establish a new foundation for a domestic energy strategy which places Americans in charge of America's energy future. A strategy based upon the firm belief that the domestic natural gas and oil industry plays an essential role in both our national and economic security...These actions [in the Plan] will enhance America's economic competitiveness and provide overdue economic encouragement to a region of our country that has always made us strong, independent and more secure."

The President's Domestic Natural Gas and Oil Plan, among other things, calls for increased natural gas and oil production through the development and application of technology and a reduction in the cost of regulation while maintaining environmental protection. The extensive testimony presented at the recent hearings in Houston and New Orleans outlined the potentially devastating effects to the entire natural gas industry--and ultimately the U.S. consumer--of the overly broad

provisions of the proposed MMS regulations. Columbia concurs with this testimony and believes the MMS's ANPR stands in direct opposition to the President's new Domestic Natural Gas and Oil Initiative.

Specific Comments

Insurance as an Asset

Under 33 CFR Part 135.213, qualification for self-insurance must be supported by a copy of the self-insurer's current balance sheet, income statement and statement of change in financial position that are certified by an independent Certified Public Accountant and must be accompanied by either:

(a) A statement confirming that current assets exceed current liabilities and the self-insurer's net worth exceeds the amount of the requested insurance.

(b) A statement which shows that sufficient assets or cash flows are available to provide funds to retire a claim for the amount of the self-insurance.

It appears the primary concern of this regulation is whether or not a self-insurer can financially respond in the event of a pollution incident to assure prompt clean up. Columbia suggests that the proposed regulations permit the MMS to accept insurance coverage for "Discharges" under the Act as an asset to qualify as a self-insurer. In such cases, management of the company would submit a letter to the MMS attesting to the existence of coverage for the amount of self-insurance requested. Either a copy of the policy or certificate of insurance could be included with the submission. Evidence of insurance coverage should in and of itself be a satisfactory certification of financial responsibility for OPA90 compliance. Such coverage would be readily available to address "Discharges" under the Act while recognizing the Congressional intent to limit third-party liability under the Act; e.g., 33 U.S.C. §2716(g). Evidence of insurance should not hold the insurance company providing the coverage primarily liable for any amount greater than what the policy provides.

Amendments to Guarantor/Direct Action Required

In line with treating insurance coverage as an asset for OPA90 compliance purposes, insurance company unlimited liability and direct action features should be eliminated. Columbia, like other parent holding companies, maintains insurance for pollution in substantial amounts. Columbia's Sudden & Accidental Pollution coverage is in excess of $150 million. Even though this is the case, Columbia cannot obtain, from its insurance carriers, evidence of such coverage for its affiliates. If a carrier were to provide such evidence, the requirements of the Act would make the insurance carrier, as well as the company, a guarantor. The principal flaw of the Act is that by making such insurers provide certification of financial responsibility for smaller companies, the insurers then become directly liable as guarantors for not only the OPA90 but also any third-party liabilities of such companies. Under such circumstances insurers are not willing to provide such evidence if they are to be held liable in the same light as a responsible party.

It is strongly urged that this condition under the Act be amended. By doing so, it would remove a significant problem for operators subject to the Act to provide evidence of financial responsibility, which they do have. Relieving insurance underwriters of the condition of direct action from a host of injured parties and having them only responsible to the extent of any insurance available to the responsible party is all that should be expected of the insurance company. Going beyond the insurance limits provided is certainly not equitable and contrary to Section 1016(g) of the Act.

Pipelines are Exempt from Section 1016 "Financial Responsibility"

Subsections (a) and (c) of Section 1016 clearly define those facilities for which Congress has mandated an evidentiary showing and identifies the level of "Financial Responsibility" each "responsible party" must "establish and maintain." In this regard, Section 1016(c) "Offshore Facilities," states:

> "(1) In general - [except for deep water ports], each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected...."

Clearly, this paragraph requires each "responsible party" to "establish and maintain evidence of financial responsibility" for an "offshore facility" as that term is

defined with respect to a "responsible party." Congress in Section 1001 "Definitions" has provided with specificity exactly which facilities the "responsible party" "must establish and maintain evidence of financial liability." At subsection (32), we find the term "responsible party" means, with respect to an "offshore facility":

> ...(c) Offshore Facilities - In the case of an offshore facility (other than a pipeline or a deepwater port...) the lessee or permittee of the area in which the facility is located or the holder of a right of use, or easement granted....

Thus, Section 1016 "Financial Responsibility" does not apply to pipelines.

Establish an Applicability Threshold Level for Purposes of Enforcing Financial Responsibility

Congress and the courts have given federal agencies great latitude in interpreting and designing regulatory programs to implement Congressionally-mandated legislative directives. Thus, the MMS when faced with an unlimited requirement which on balance is neither productive nor reasonable when taking the intent of the legislation into consideration may establish threshold levels below those to which the legislative requirements do not apply.

In this regard, Columbia believes the MMS has the discretionary authority to establish an applicability threshold level (ATL) for "oil"; the storage, production, and/or transportation of which, if less than that level, is not subject to the MMS financial responsibility regulations. This belief is supported by other federal agency proposals under OPA90. Both the U. S. Coast Guard and the U.S. Environmental Protection Agency (EPA) have published Notices of Proposed Rulemakings that exempt persons who handle less than an ATL of "oil" from compliance with their OPA90 regulations.

The U.S. Coast Guard, under OPA90, has proposed 1,000 cubic meters (about 6,290 bbls) of "oil" as their ATL. The Coast Guard's responsibility relates to "tank vessels that carry oil as their primary cargo." This number was established after the Coast Guard completed a review of spill data which showed that

only a small amount of cargo oil is spilled from vessels with a cargo carrying capacity of less than 1,000 cubic meters.

EPA, under OPA90, has also established an ATL. In brief, EPA is to establish regulations that require owners or operators of onshore non-transportation "oil" storage facilities to prepare and implement Facility Emergency Response Plans for those facilities which, because of their location, could reasonably be expected to cause "substantial harm" to the aquatic environment by a discharge of "oil."

EPA's study evaluated the effects certain sized "oil" spills had on fresh, brackish, and ocean water environments and the propensity for such "oil" storage facilities to have a spill that would cause "substantial harm" to such aquatic ecosystems, EPA concluded that an instantaneous release from any facility having a total "oil" storage capacity of less than 1,000,000 gallons (about 23,800 barrels), regardless of location, would not have the potential to cause "substantial harm" to the aquatic environment provided such facility did not engage in over-water transfers of oil to or from vessels.

Therefore, Columbia recommends that the MMS establish an ATL comparable to that established by EPA that would eliminate or exempt facilities from the financial responsibility requirement proposed in the ANPRM. As the EPA study considered "oil" spill volumes that would not cause "substantial harm" to the aquatic environment, Columbia believes 23,800 barrels would not be an unreasonable quantity for MMS to adopt as their regulatory ATL.

Natural Gas Condensates Are Not "Oil"

The MMS has incorrectly interpreted the definition of "oil" in Section 1001(23) of OPA90 to include "natural gas liquids," one of a number of industry synonyms for "natural gas condensates." "Natural gas condensates" are officially defined in the EPA's "Inventory of Chemical Substances" published pursuant to Section 8(b) of the Toxic Substances Control Act (TSCA). Under Section 8(b), the Administrator was to "...compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States." The "List" or "Initial Inventory" was, at EPA's direction, to include naturally occurring substances in addition to chemical substances manufactured within the United States. Among other chemical substances associated with the production, gathering, processing, storage, transportation and/or utilization of natural gas, the EPA's Initial Inventory included the chemical

substance "natural gas condensates" and was assigned Registry No. 68919-39-1. This chemical substance is defined:

> **Natural Gas Condensate (68919-39-1)**
> A complex combination of hydrocarbons separated and/or condensed from natural gas during transportation and collected at the well head and/or from the production, gathering, transmission, and distribution pipelines in deeps [sic - drips], scrubbers, etc. It consists predominantly of hydrocarbons having carbon numbers predominantly in the range of C_2 through C_8.

The chemical substance "petroleum" is assigned Registry No. 8002-05-09 and is defined:

> **Petroleum (8002-05-09)**
> A complex combination of hydrocarbons. It consists predominantly of aliphatic, alicyclic and aromatic hydrocarbons. It may also contain small amounts of nitrogen, oxygen and sulfur compounds. This category encompasses light, medium, and heavy petroleums, as well as the oils extracted from tar sands. Hydrocarbonaceous materials requiring major chemical changes for their recovery or conversion to petroleum refinery feedstocks such as crude shale oils, upgraded shale oils and liquid coal fuels are not included in this definition.

EPA points out in the "Use of the Inventory" section that the Registry definitions and Registry Numbers, among other things, are "to support the need of government regulatory agencies" in understanding the particular chemical substances. Thus, the Inventory recognizes that "natural gas condensate" is not "oil" as that term is defined in OPA90 and in H.R. 1465--the House Bill which the Conference Committee adopted and amended as the Conference Bill.

Further, Congress has a long and continuous history of developing distinct legislation applicable to the natural gas industry or the oil industry. That Congress is uniquely aware of the differences between these two naturally occurring substances is clearly reflected in its transportation safety legislation, the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. The Natural Gas Pipeline Safety Act requires the establishment of safety standards for the onshore and offshore transportation of gas and its storage, and for onshore and offshore pipeline appurtenances and facilities including, without limitations, any equipment, facility or building used in the transportation or the treatment of gas in interstate or foreign commerce. That natural gas condensates are included in the definition of natural gas is evident in the legislative process utilized by Congress to enact the Natural Gas Pipeline Safety Act.

Thus, given its natural gas and oil legislation, Columbia believes that Congress intended the Oil Pollution Act to be limited to "oil" as that term was clearly defined in H.R. 1465--"The term 'oil' means petroleum, including crude oil or any fraction or residue therefrom." If Congress had intended for this definition to be applied to substances other than oil or petroleum, or fractions or residues of oil, it had the knowledge, experience and ability to specify a broader applicability. However, it did not do so.

In regard to "natural gas condensates," we wholeheartedly agree with the MMS that "natural gas condensates" pose "significantly less environmental risk than crude or refined oil." Indeed, we aver that "natural gas liquids" will not, if released in quantities contained in natural gas facilities, significantly harm the onshore or offshore environment. Therefore, by its own admission, MMS has no compelling reason to include "natural gas condensates" in the definition of "oil."

Finally, Columbia finds no justification for inclusion of dry "natural gas" within its OPA90 regulatory scheme.

Written Comments of
ENSERCH Corporation

Before the
Committee on Merchant Marine and Fisheries
Subcommittee on Oceanography, Gulf of Mexico
and the Outer Continental Shelf

U. S. House of Representatives
Washington, D.C.

October 26, 1993

Hearing on
Materials Management Service's Advanced Notice
of Proposed Rulemaking on Certificates of
Financial Responsibility

ENSERCH Corporation ("ENSERCH") is an integrated company focused on natural gas. The corporation, which is headquartered in Dallas, Texas, explores for and produces natural gas and oil, and gathers, processes, transports and markets natural gas. It converts natural gas to other products, such as vehicle fuel and electric power, and markets those products.

Lone Star Gas Company, a division of ENSERCH, is an intrastate natural gas company which owns and operates natural gas transmission lines, gathering lines, compressor stations, distribution systems, and related properties by which it transports gas in intrastate commerce to nearly 1.25 million customers within the State of Texas, and distributes same to domestic, commercial and industrial customers within the state. Certain pipeline facilities owned by Lone Star Gas Company are located above or under certain navigable inland waters of the United States.

Enserch Exploration, Inc., a subsidiary of ENSERCH, drills exploratory and development wells for oil and gas, operates producing wells, and markets oil and natural gas. Enserch Exploration, Inc. operates in the United States onshore in numerous states as well as on the Outer Continental Shelf offshore Louisiana and Texas.

In the comments that follow, ENSERCH would like to point out the potential impact this rulemaking may have, and to discuss the flexibility MMS may have in developing regulations that would be acceptable.

1. **The OPA 90 financial responsibility regulations being considered by MMS would result in premature abandonment of substantial numbers of oil and gas wells.**

   Under the OPA 90 regulations that are being considered by MMS, evidence of financial responsibility will either be unavailable at any cost or will be extremely

expensive. Very few companies will be able to qualify for self-insurance. Many offshore operators will have to get out of the business. It is doubtful that other companies will acquire the majority of wells abandoned by operators who are forced out of business. There will not be any smaller companies to purchase the abandoned wells and the major companies have been leaving the United States because of a tougher economic environment, declining United States oil production, increased environmental regulation and greater foreign opportunities. For those companies that can afford the cost of financial responsibility under OPA 90, the increased cost would have to be allocated to producing wells. This would adversely affect the economics for the producing wells, resulting in premature abandonment.

Smaller independents often operate wells more efficiently due to lower operating costs. As wells reach their economic limit for larger companies, they are sold to smaller companies which can operate them several more years. If these small companies cannot qualify for financial responsibility under OPA 90, the marginal wells will be abandoned by the larger operators. Such abandonment would result in loss of jobs, a lowering of the GNP and a loss of royalty revenue for MMS.

Because of the great expense involved in exploring for, drilling and producing oil and gas on the OCS, the industry is highly dependent on joint ventures. To the extent that the financial responsibility requirements of OPA 90 force significant numbers of companies out of the business, there will be fewer industry partners for those companies that remain. Consequently, existing production will be prematurely abandoned and fewer wells will be drilled.

2. **The expansion of the OPA 90 financial responsibility requirements for offshore facilities to onshore facilities such as pipelines is unwarranted and unjustified under OPA 90.**

The MMS should confine the application of the OPA 90 financial responsibility requirements to those "offshore facilities" which are engaged in the exploration and production of oil and gas on the Outer Continental Shelf (OCS).

OPA § 1016(c)(1) provides, in pertinent part, that:

> . . . each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected under 1004(a) in a case in which the responsible party would be entitled to limit liability under that section. (emphasis added). 33 U.S.C. § 2716(c).

Thus, the relevant statutory definition for purposes of interpreting the application of

OPA § 1016 is the single and specific term used by Congress in § 1016(c) -- "responsible party" -- defined under OPA § 1001(32)(C) with respect to "offshore facilities" as follows:

> (32) "responsible party" means the following:
>
> (C) OFFSHORE FACILITIES - In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (423 U.S.C. §§ 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit. (emphasis added). 43 U.S.C. § 1001(32)(C).

This definition of a "responsible party" for an offshore facility obviously applies only with respect to facilities engaged in OCS oil leasing activity, referring as it does, to only three potential types of entities: "lessee," "permittee," or "the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act." In turn, OPA § 1001(16) defines the term "lessee" as meaning:

> . . . a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as that section is defined in § 2(a) of the Submerged Lands Act) or on submerged lands of the Outer Continental Shelf, granted or maintained under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.). 33 U.S.C. 2701(16).

A "permittee" is defined under OPA § 1001(28) as meaning:

> . . . a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1340) or applicable state law. 33 U.S.C. § 2701(28).

While the term "holder of a right of use and easement" is not defined in OPA, it refers again to the possessor of interest "granted under applicable state law or the Outer Continental Shelf Lands Act," and such possessor is a "responsible party" for an offshore facility only when it is "a different person than the lessee or permittee."

OPA § 1001(32)(C).

Based on the discussion above, it is clear that OPA § 1016(c) imposes an obligation to maintain evidence of financial responsibility solely on the "responsible party" for an "offshore facility," a term that is specifically defined under the statute. OPA § 1001(32)(C) provides a statutory definition of "responsible party" which plainly refers only to entities (e.g., lessee, permittee) which are or intend to be engaged in state or federal oil and gas leasing activity on the OCS. OPA therefore does not permit the MMS to unilaterally broaden the scope of its regulatory jurisdiction in this rulemaking to facilities which have been traditionally characterized, under the Federal Water Pollution Control Act, as "onshore facilities" (such as onshore pipelines).

Another important aspect of OPA § 1016(c) is that the financial responsibility must be satisfied "to meet the amount of liability to which the responsible party could be subjected under § 1004(a) . . ." OPA § 1016(c)(1), 33 U.S.C. § 2716(c)(1). Section 1004(a) provides OPA's liability limits for various entities, distinguishing between the responsible party for an offshore facility under § 1004(a)(3) (subject to liability for all removal costs plus $75,000,000), and the responsible party for an onshore facility under 1004(a)(4) (subject to a liability limit of $350,000,000). 33 U.S.C. 2704(a)(3)-(4). Because OPA's financial responsibility provision under § 1016(c) for offshore facilities was expressly created for the purpose of satisfying liability up to the applicable limits of OPA § 1004(a), the distinctions made between offshore facilities and onshore facilities in § 1004(a) must also be observed in determining, and thus narrowing, the scope of the MMS jurisdiction in this rulemaking.

In contrast, ENSERCH believes that the many types of facilities identified by MMS as potentially included under the definition of "offshore facility" -- pipelines, storage tanks, private marinas, etc. . . -- are instead held by responsible parties for "onshore facilities" as that term is used in § 1004(a)(4) and are distinct from, and therefore are not, held by responsible parties for "offshore facilities" under § 1004(a)(3). This reading is confirmed by OPA's legislative history, particularly the House Conference Report which, in discussing OPA's definitions, expressly clarified:

> To the extent that docks, piping, wharves, piers, and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land-based terminal are deemed to be part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility under the Conference substitute. (emphasis added). H. Conf. Rep. No. 653, 101st Cong., 2d Sess., 102 (1990).

Thus, these "onshore facilities" are not addressed by the financial responsibility

requirements of § 1016(c), which apply only to responsible parties for "offshore facilities" referred to in § 1004(a)(3).

Aside from the explicit reference in OPA § 1016(c) (the financial responsibility requirement) to § 1004(a) (the limitations on liability), several other sections in OPA Title I distinguish between responsible parties for onshore and offshore facilities. Even the OPA § 1001(32) definition of "responsible party" distinguishes between "onshore facilities" in subsection (B) and "offshore facilities" in subsection (C). In addition, OPA § 1004(d)(1) authorizes the President to reduce the $350 million liability limit for categories of "onshore facilities" based upon "factors relevant to risks posed by the class of category of facility."

In disregarding the statutory distinction which appears throughout OPA Title I between responsible parties for "onshore facilities" and responsible parties for "offshore facilities," the MMS incorrectly would include "onshore facilities" such as pipelines crossing inland rivers, storage tanks, marinas, and the like within the universe of "offshore facilities." Such a result would be contrary to the overall scheme of Title I of OPA which repeatedly distinguishes between the liability and compensation provisions to apply to responsible parties for "onshore facilities" and "offshore facilities." The fact that OPA § 1016 does not recite financial responsibility requirement for "onshore facilities," (but does set out separate liability limits and studies of such limits for "onshore facilities") is a reflection of Congress' intention not to impose any such financial responsibility requirement for "onshore facilities" in OPA.

Thus, the MMS should recognize that Congress' exclusion of financial responsibility requirements for responsible parties for "onshore facilities" is evidence that it "intentionally and purposely" decided against any such requirement. Any attempt to impose a financial responsibility requirement for such "onshore facilities", which ignores their statutory distinction from "offshore facilities," would therefore reflect a patently incorrect interpretation of OPA § 1016(c).

3. **MMS needs to use as much flexibility as possible in developing acceptable methods for evidencing financial responsibility. There are numerous possible methods which MMS should consider.**

At this point in time, there are no other methods which exist and are approved by the MMS to satisfy financial responsibility requirements (it could be argued several of the current methods enumerated above currently do not exist, either); however, additional methods may take the form of:

a. Government-sponsored response funds for a to-be-determined fee, a separate insurer or guarantor could be administered by the federal government, similar

to the FDIC or PBGC. This would be in addition to the Oil Spill Liability Trust Fund and would specifically be used for financial responsibility evidencing purposes. However, the petroleum industry has already paid approximately $1 billion into the government trust fund for spill clean-up. More reliance should be placed on paying for spills from the existing fund rather than imposing additional burdens on the industry.

b. Quasi Insurer/Guarantor - at least one effort is underway in the professional insurance brokerage community to develop a facility to provide guarantees for financial responsibility certification. It is unknown if this facility will find enough support in the insurance/financial industry to become a viable option.

c. Member-supported Guarantor - this would be similar to b. above except to be administered by the oil/gas industry as a contributory fund, a risk-retention group, industry captive insurer or other legal vehicle to satisfy the financial responsibility amounts.

d. Line of Credit - A company should be able to use a line of credit as an asset for self-insurance purposes.

e. Establish a certificate to be signed by an operator's chief financial officer (or similar capacity) for qualifying under the insurance method. The officer would state the operator had the required amount of insurance to comply with the regulations. If necessary, a copy of the policy or the standard certificate of insurance could be included with the certificate. This would allow companies to qualify without putting the insurers in the role of guarantors.

As to whether all methods, both approved and yet-to-be developed, provide an equal claims-paying assurance, that is highly dependent on the method and the specific party providing the guarantee. For example, some insurers are much more financially healthy than others. In the past, regulators had used a private insurance industry rating organization, A.M. Best, to gauge insurer's financial capacity, but Best reports information after-the-fact and may not be up-to-date to forestall a previously-approved insurer's future impairment.

4. **The problem regarding the availability of insurance for those responsible parties that cannot self-insure is not the availability of an insurance market. Rather, the primary problem is that insurers may be considered as "guarantors" under OPA 90, and insurers are unwilling to act as guarantors.**

To our knowledge, OPA 90 in and of itself has not hampered the ability of responsible parties to contract policies of insurance to cover their risks of pollution damage to the navigable waters of the United States. Insurance is available and can

be purchased for these risks, although insurance covering gradual leaks or seepage-type events is not as readily available as insurance covering sudden and accidental events. The unavailability of insurance has centered on the question of providing evidence of financial responsibility.

Even though § 1012(b) does not allow liability to be transferred from a responsible party and § 1016(g) of the Act purports to provide assurances to guarantors (in context of the Act, insurers would be guarantors) that liability assessed against a guarantor would not be greater than the amount of the guarantee they provide, insurers feel that the Act will not prevent U.S. courts from finding gross negligence on the part of responsible parties so as to make the limitations of liability granted in Sections 1003 and 1004 meaningless. Therefore, underwriters feel their liability could become unlimited in the light of U.S. court "deep pocket" searches. Since insurance is available, normal certificates of insurance where insurers do not act as guarantors, but perhaps with coverage that has specific limits and aggregates for OPA 90, should be available to use in conjunction with the "identified assets" test.

It is important to reiterate that insurers' main problem is that of being a guarantor under the Act. Remove this misplaced obligation and allow insurance to be the financial indemnification vehicle that it is intended to be, and underwriters will be able to quantify their exposure and will be willing to provide certificates to evidence coverage placed.

5. **MMS, as the agent of the President, has broad discretion under § 1016(e) of OPA 90 to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable in establishing evidence of financial responsibility.**

No defenses have been identified or offered by insurers, sureties or possible guarantors to ensure the availability of affordable bonds, insurance, or other forms of guarantees. Due to the construction of the Act making "any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act" a "Guarantor" [Section 1001(13)], defenses available to responsible parties are available to insurers, sureties, etc. as Guarantors. However, the problem with insurers and sureties is that they provide a limited amount of indemnity (the insurance or surety contract) whereas the liability of a Guarantor is potentially unlimited in scope. Even though § 1016(g) of the Act limits Guarantors' liability for damages or removal costs to the amount of financial responsibility they provide, because a Guarantor stands in the place of a responsible party, this does not provide a limitation on a Guarantor's legal defense costs, which can be substantial in the United States (often overshadowing damages or removal costs), and compounded because the Act provides for direct action from any claimant for injury to real or personal property or loss of profit or earning capacity. The

defense that should be available is that insurers, sureties, banks providing letters of credit or other parties evidencing financial responsibility under the Act should not be treated as Guarantors.

The MMS is currently not accepting bank letters of credit as acceptable financial responsibility evidencing under OCSLA regulations (and anticipated under OPA regulations) because to do so would put banks in the form of a Guarantor, subject to direct action by the federal government. In turn, the thought is that banks would then be acting as an insurer and this would run afoul of many states' laws prohibiting banks from engaging in the business of insurance. A letter of credit is strictly a financial instrument promising to pay a certain amount to the holder of the instrument usually with broad conditions to access funds. Banks providing letters of credit should not be treated as Guarantors, but letters of credit should merely be considered a source of unencumbered funds available to pay for damages/clean-up/legal costs.

We are not aware of any companies willing to act as third party Guarantors except for potential entities mentioned as quasi insurer/guarantor in the response to question 2. As to terms and conditions, as with insurers, sureties, etc., third party Guarantors likely will not exist until some limitation on total liability, including legal costs and protection from direct action is provided.

6. **MMS should consider a variety of indemnity mechanisms, including flexible self-insurance requirements, to achieve the $150 million oil spill responsibility requirements of OPA 90.**

MMS should allow multiple responsible parties to pool or aggregate their assets for the purpose of evidencing financial responsibility. Section 1016(c) requires that "each responsible party with respect to an offshore facility shall establish and maintain financial responsibility. . ." However, this is not to say that a single indemnity mechanism may not be acceptable as evidence for a number of responsible parties or their offshore facilities.

As for a limit on the number of facilities evidenced on a single indemnity, it should be noted that the focus of OPA is on the greatest single exposure. In the case of vessels, the evidence required is to be determined by size of largest vessel, and not aggregated across all possible exposures. Given the industry's strong environmental performance on the OCS over the past decades, the likelihood of simultaneous worst-case incidents is a near impossibility.

With regard to criteria for self-insurance, the financial tests currently used under OCSLA are (1) the cash flow test and (2) the current ratio/net worth test. These tests are proposed for OPA 90 also, but under OPA 90 the current ratio test would

be more restrictive. Rather than requiring current assets to simply exceed current liabilities, OPA 90 regulations being considered by MMS apparently would require current assets to exceed current liabilities by $150 million.

ENSERCH would not qualify under the cash flow test, and ENSERCH typically would not meet the current ratio part of the current ratio/net worth test. However, for the most recent year end (December 31, 1992) ENSERCH's net worth was nearly $800 million.

MMS is placing too much emphasis on the current ratio. It is absurd that a company such as ENSERCH, with an $800 million net worth, cannot qualify for $150 million in self-insurance. The regulations should allow a responsible party to self-insure if the party has sufficient assets to respond to the immediate impact of a worst-case scenario spill. The remainder of the $150 million could be backed up by a company's net worth.

7. **Facilities that store or process only dry natural gas, and all onshore natural gas pipelines, should be exempt from the financial responsibility requirements of OPA 90.**

OPA 90 applies to "a vessel or a facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone" [Section 1002(a)]. Under OPA definitions [Section 1001 (23)], oil "means oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under . . . CERCLA . . . " . In addition, § 1001 does not include a definition for either "gas" or "natural gas," further demonstrating that it was not the intent of Congress to include such substances under the provisions of the Act or subsequent regulations.

Such facilities should be exempt from regulations since dry natural gas does not contain oil or any liquid hydrocarbons and, therefore, does not pose a threat of a discharge of oil into or upon the navigable waters or adjoining shorelines.

Condensate is a light hydrocarbon liquid obtained by condensation of hydrocarbon vapors. It consists of varying proportions of butane, propane, and pentane, and heavier fractions, with little or no ethane or methane and is found in the gaseous phase in the subsurface reservoir and will separate out in liquid form at the pressures and temperatures at which production separators normally operate.

Offshore facilities that store or process a de minimis quantity of natural gas

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condensate should be exempt from the financial responsibility requirements. Facilities handling at any one time 1,000 barrels or less of these highly volatile, light end petroleum fractions were exempted from the USCG financial responsibility regulations (33 CFR Part 135). The USCG exemption was based on the properties and characteristics of these light end fractions -- they evaporate and dissipate very rapidly thereby posing less environmental risk. In the unlikely event that a facility which stored or processed 1,000 barrels of condensate had an event which caused the substance to be spilled, the condensate, similar to the light end fractions described above, would also evaporate and dissipate very quickly. Past history indicates that these should continue to be exempt.

A facility which stores or handles 1,000 barrels or less, or a facility which processes more than 1,000 barrels per day but has a storage capacity 1,000 barrels or less of condensate, should be exempt from the requirements of financial responsibility. A facility which produces, for example, 1,500 barrels per day will most likely ship the condensate by pipeline several times during the day. This means that at any one time less than 1,000 barrels will be stored on the platform.

Another factor which should be considered by MMS is that many operators have a variety of facilities which they own and/or operate. Section 1016(c)(1) states "In a case in which a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the facility having the greatest maximum liability." Therefore, operators with multiple facilities will likely have to meet the requirements for one of their facilities. This de minimis exemption can be utilized by operators which only have gas-type facilities.

As discussed above in Section 2, ENSERCH does not believe that the OPA 90 financial requirements applicable to a "responsible party" for an "offshore facility" are applicable to "onshore facilities" (such as onshore pipelines). Further, ENSERCH submits that onshore natural gas pipelines should be exempt from the financial responsibility requirements because natural gas pipelines store or handle a de minimis quantity of "oil." Most gas gathering lines are connected to processing plants where heavier hydrocarbons are removed from the gas and sold separately. The small amount of condensates in such lines could not reasonably be expected to cause substantial harm to the environment. Beyond the processing plant, the gas generally is transported in a transmission line for delivery to a distribution center or a storage facility. Natural gas may form small amounts of condensate while being transported in the transmission pipelines because of the recurring compression and subsequent pressure drops. Condensates so formed likewise could not reasonably be expected to cause substantial harm to the environment. It would be virtually impossible to determine at any particular time exactly how much condensate is in a given section of pipeline. Therefore, a 1,000 barrel de minimis provision applicable to gas

pipelines would be impractical. Since any spill of condensate from a natural gas pipeline could not be expected to cause substantial harm to the environment, natural gas gathering, transmission and distribution lines should be deemed to contain de minimis quantities of "oil" and should be exempt from the OPA 90 financial responsibility requirements.

CONCLUSION

In conclusion, ENSERCH is very concerned that the final regulations implementing OPA 90's financial responsibility requirements be realistic, flexible and achievable. We hope serious consideration will be given to the above recommendations in view of (1) the emphasis being espoused by the Clinton Administration on increased domestic production, (2) the fact that many major oil and gas companies are leaving the United States because of a tougher economic environment, declining United States oil production, increased environmental regulation, and greater foreign opportunities, (3) the longstanding excellent oil spill record held by offshore operators, and (4) the difficulty of most facility operators in satisfying the $150 million financial responsibility requirements without the cooperation of a willing insurance community.

ENSERCH Corporation appreciates the opportunity to provide these written comments.

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